

level, and much more affected by the extent to which a provider is competing with other providers in a specific geographic market. Moreover, the incentives to skimp on service quality, infrastructure and available features will apply not only to Verizon Wireless, but also to whatever competitors remain in the overlap markets after the transaction is complete. In other words, all consumers in the affected markets, not just Verizon Wireless customers, are likely to suffer.

The correct remedy to avoid these impacts is to require divestiture of sufficient assets in the most affected markets, including spectrum and infrastructure, to maintain competition in these markets at the current level. Given the concentration of the high-overlap markets in Minnesota, Montana, North Dakota and South Dakota, divestiture in these markets, and potentially spectrum and infrastructure from contiguous markets, to create a viable alternative provider is the most effective way to ensure that this result is achieved.³⁵ At a minimum, the divestiture requirement should include 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 Verizon Wireless should be required to divest at least 30 MHz of spectrum in each of those markets to ensure that the new competitor will have adequate spectrum to compete.

As in the *Verizon Wireless-RCC Order*, these divestitures should include “all licenses, leases, and authorizations and related operational and network assets, which shall include certain employees, retail sites, subscribers, customers, all fixed assets, goodwill” associated with the divested spectrum.³⁶ This complete divestiture is necessary to ensure that the new licensee will be able to operate a going concern.

³⁵ As a further condition, Verizon Wireless also should be required to enter into a reasonable, long-term roaming agreement with the entity or entities that acquire spectrum in these markets.

³⁶ *Id.*, ¶ 113.

This remedy is appropriate because it addresses the specific concerns raised by the Merger Applications without eliminating any of the benefits that Verizon Wireless claims will occur. In particular, Verizon Wireless still will be able to fill the holes in its network that it describes in the Merger Applications, and will be able to obtain a reasonable amount of additional spectrum in other parts of the country as well. What Verizon will not be able to do, however, is create new markets in which it is dominant by virtue of its spectrum holdings, rather than the price or quality of its service. As a result, a divestiture requirement would maintain the balance between the private business needs that Verizon Wireless expresses and the public interest considerations that the Commission must apply.

The Verizon Wireless Divestiture Letter effectively acknowledges that divestiture will be required under any reasonable competition analysis.³⁷ However, it does not promise divestiture that will meet all of the requirements described above. For instance, in some of the affected markets, it appears that divestiture could leave the buyer with less than 30 MHz of spectrum, and it may still be necessary to require divestiture of spectrum and infrastructure from contiguous markets to ensure that seamless coverage is available. Nevertheless, the letter demonstrates that even Verizon Wireless recognizes that divestiture is necessary before the proposed transaction can be approved.

IV. The FCC Must Condition Any Grant of the Merger Applications

Petitioner submits that the acquisition of ALLTEL by Verizon Wireless should only be approved by the Commission after analyzing the public interest harms and benefits presented by the merger of these two companies, recognizing this unique opportunity to combat discrimination and improve minority ownership in the telecommunications industry, and

³⁷ Verizon Wireless Divestiture Letter at 1.

conditioning its approval upon appropriate divestitures. Petitioner urges the Commission to order the divestitures, as outlined herein, and further propose that the Commission do so through a program that will help protect consumers from any competitive harms presented by the merger, and will also benefit socially disadvantaged entrepreneurs who continue to suffer from discrimination. As a condition approving the merger application, the Commission should require that:

- (1) The merged entity of Verizon Wireless – ALLTEL divest properties shown in Exhibit 3 where the combined holdings following the completion of the proposed transaction would exceed 115 MHz, with divestiture of at least 30 MHz of spectrum in each market area, and with the post-transaction holdings of Verizon Wireless not to exceed 95 MHz in any of the affected market areas.
- (2) To encourage minority investment and participation in the telecommunications industry, the merging companies agree 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.

Petitioner believes that such groups could be identified through a program designed to help socially disadvantaged businesses (“SDBs”) gain a foothold in the telecommunications industry. In particular, this program would be modeled on Sections 8(a) and 8(d) of the Small Business Act of 1958³⁸ and the Small Business Administration’s (“SBA”) implementing regulations,³⁹ so that a business would be qualified as an SDB based on whether it is owned by socially disadvantaged individuals in a manner that complies with one of the three tests that had been included in the Telecommunications Ownership Diversification Act of 2003, a bill

³⁸ See Pub. L. No. 85-536, 72 Stat. 384 (codified at 15 U.S.C. §§ 631 *et seq.*).

introduced by Senator McCain. Under this program, an entity could qualify as an SDB in three *different ways*:

- 1) **30-Percent Test:** If socially disadvantaged individuals collectively own at least thirty percent of the equity of the entity and control more than fifty percent of the voting interests; or
- 2) **15-Percent Test:** If socially disadvantaged individuals collectively own at least fifteen percent of the equity and control more than fifty percent of voting interests, and no other person owns more than a twenty-five percent equity interest; or
- 3) **Publicly-Traded Corporation Test:** If the entity is a publicly traded corporation and socially disadvantaged individuals control more than fifty percent of the voting stock in the corporation.⁴⁰

Petitioner proposes that the Commission define socially disadvantaged individuals as follows:

Socially disadvantaged individuals are those who, as individuals or because of their membership in a class, have been subjected to racial or ethnic prejudice or cultural bias within the telecommunications industry or the funding capital markets because of their identity as members of groups and without regard to their individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.⁴¹

Petitioner also proposes that this definition include a rebuttable presumption that the following individuals are socially disadvantaged: African Americans, Hispanic Americans,

³⁹ See 13 C.F.R. Pt. 124.

⁴⁰ See Telecommunications Diversification Act of 2003, S. 267, 108th Cong., § 3(f)(6)(2003).

⁴¹ This definition is a slight modification of the SBA's definition of socially disadvantaged individuals at 13 C.F.R. § 1241.103(a)(2004). The Tenth Circuit upheld this definition. *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1155 (10th Cir. 2000), *cert. dismissed*, 534 U.S. 103 (2001).

Native Americans, Asian or Pacific Americans, and any other group of individuals that the Commission may from time to time designate as similarly disadvantaged.⁴²

This program for identifying SDBs would satisfy the Supreme Court's requirement that race-conscious solutions must be narrowly tailored. The Supreme Court has announced that any race-conscious measure must meet several standards to be narrowly tailored. First the Commission must individually review each request for race-based benefits,⁴³ and as the FCC reviews each application, race may not be a singly decisive factor.⁴⁴ Second, the program may not unduly burden members of a non-favored racial or ethnic group, and, third, the race conscious measures may only last as long as they are necessary.⁴⁵

The program proposed by Petitioner provides significant flexibility. It does not automatically aggregate all individuals into one group or another. Rather, every individual or entity with an interest in acquiring the divested assets, regardless of racial or ethnic background, has the opportunity to participate and demonstrate qualification as an SDB. The Commission's individual review of each entity's request to qualify as an SDB ensures that all decisions will be made on a case-by-case basis and that no potential acquirer of the divested assets will be insulated from Commission scrutiny.

⁴² SBA regulations include a similar rebuttable presumption at 13 C.F.R. § 124.103(b). The United States Court of Appeals for the Eighth Circuit has concluded that a rebuttable presumption that certain individuals are economically or socially disadvantaged complies with the Constitution. *See Sherbrooke Turf, Inc. v. Minn. Dept of Transp.*, 345 F.3d 964 (8th Cir. 2003), *cert. denied*, 541 U.S. 1041 (2004).

⁴³ *See Grutter v. Bollinger*, 537 U.S. 306, 336-337 (2003); *Gratz v. Bollinger*, 539 U.S. 244, 271 (2003); *Gratz*, 539 U.S. at 276 (O'Connor, J., concurring) (discussing the importance of individualized review).

⁴⁴ *See Gratz*, 539 U.S. at 272.

⁴⁵ *See Grutter*, 539 U.S. at 339, 342.

Under this proposal, although the Commission would presume that members of certain racial and ethnic groups are socially disadvantaged, race will not be a determinative factor. If, in light of all the circumstances, the Commission determines that the applicant has overcome its social disadvantage or never was the victim of discrimination, the Commission could deny the request for classification as an SDB. Furthermore, members of groups who are not presumed socially disadvantaged may still qualify as an SDB.⁴⁶ Individualized review prevents this proposal from burdening any particular racial or ethnic group. Any individual, regardless of race or ethnicity, who has suffered from discrimination can seek classification as an SDB, and thereby become eligible to receive the benefit of the right of first negotiation to acquire the divested assets. No group is disfavored or burdened because the program treats each applicant as an individual and not as a member of a racial or ethnic group.⁴⁷ Finally, Petitioner's proposal as set forth herein, because it relates only to the proposed acquisition of ALLTEL by Verizon Wireless, is necessarily limited in duration.

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.

Section 310(b)(4) of the Communications Act establishes a 25 percent benchmark for investment by foreign entities and individuals. The foreign ownership in Verizon Wireless substantially exceeds that 25 percent benchmark, given that a non-U.S. corporation owns a major partnership interest in Verizon Wireless. The Commission has discretion to allow higher levels

⁴⁶ Both the United States Courts of Appeals for the Eighth and Tenth Circuits have determined that a similar presumption that the SBA employs is consistent with the Fifth Amendment because a meaningful individualized review is provided. See *Sherbrooke*, 345 F.3d at 973; *Adarand*, 228 F.3d at 1183.

⁴⁷ Cf. *Grutter*, 539 U.S. at 341 (declaring that the University of Michigan Law School's admissions policy does not unduly harm non-minority applicants because the school evaluates each application individually).

of foreign participation if it determines that such higher levels of foreign ownership are not inconsistent with the public interest. Under the Commission's *Foreign Participation Order*,⁴⁸ the Commission will deny an application if it finds that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal places of business are in non-WTO member countries that do not offer effective competition opportunities to U.S. investors. The Commission looks behind nominal share ownership to determine the principal place of business, nationality, or "home market" of the underlying investors through a multi-level analysis.⁴⁹

In the Merger Applications, Verizon Wireless seeks to have the Commission accept a demonstration of its entitlement to a Section 310(b)(4) public interest determination based on methodology that the Commission has expressly found to be inadequate for any entity other than Verizon Wireless to demonstrate the percentage of non-U.S. investment or to meet the "principal place of business" test to determine the nationality or "home market" of investors. Verizon Wireless bases its entitlement to a Section 310(b)(4) public interest determination on a tabulation of shareholder addresses for Vodafone and Verizon, the partners that constitute Celco Partnership d/b/a Verizon Wireless, in lieu of the sample analysis approach that the Commission requires for publicly held companies when the citizenship of the holders of widely dispersed shares is unknown. As shown below, this special Verizon-only methodology uses an entirely different definition of "foreign ownership" than the definition the Commission enforces against other applicants. The Commission cannot accept the Verizon Wireless showing without (1)

⁴⁸ *Market Entry and Regulation of Foreign Affiliated Entities*, IB 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23,891, 23,946 ¶ 131 (Nov. 26, 1997) [hereinafter *Foreign Participation Order*].

expressly acknowledging that it has overruled its longstanding policy and long line of decisions rejecting shareholder addresses as a valid means for applicants to ascertain the citizenship of shareholders to demonstrate compliance with Section 310(b), and (2) allowing all applicants subject to Section 310(b) in the services it regulates to adopt the liberalized definition of "foreign ownership" embodied in the Verizon Wireless approach.

Verizon Wireless asserts that the Commission need not examine the foreign ownership of Cellco Partnership partners Vodafone Group plc ("Vodafone") and Verizon because, according to Verizon Wireless, the Commission approved a Section 310(b)(4) showing by Verizon Wireless in 2000⁵⁰ and "[n]o material changes have occurred in Verizon Wireless' foreign ownership since that authorization was granted."⁵¹ To support its key assertion of "no material change" in the intervening eight years, Verizon Wireless relies upon a filing made on April 8, 2008, in WT Docket No. 07-208, a copy of which is attached hereto as Exhibit 2 (the "April 2008 Letter"). In the April 2008 Letter, however, Verizon Wireless assessed the foreign ownership of both Verizon and Vodafone based on "registered addresses" (that is, street addresses) of registered owners and available owner addresses of beneficial owners, an approach that the Commission has expressly, definitively, and consistently rejected for everyone but Verizon Wireless.

The Commission expressly rejected its use of "registered addresses" or "owner's addresses" as a basis for determining citizenship of shareholders for purposes of a Section

⁴⁹ See, e.g., *In re Applications of Verizon Commc'ns Inc. and América Móvil, S.A. DE CV*, Memorandum Opinion and Order, FCC 07-43, 22 FCC Rcd 6195, 6217 (Com'n, rel. March 26, 2007) [hereinafter "*América Móvil*"].

⁵⁰ See: *In re Applications of Vodafone Airtouch Plc and Bell Atlantic Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 16,507 (WTB and IB, rel. Mar. 30, 2000).

⁵¹ Merger Applications at 52.

310(b)(4) public interest determination most recently in its 2007 decision in *América Móvil*, *supra*. *América Móvil*, like the partners of Verizon Wireless, was a publicly held corporation with widely dispersed stockholdings. *América Móvil* sought to have the Commission “infer that the citizenship of the company’s beneficial owners typically will correspond to: (1) the registered addresses of stockholders that have taken possession of their stock certificates; and (2) the addresses of custodian banks and brokers that hold shares for the more numerous owners that have chosen not to possess the stock certificates.”⁵² The Commission, however, flatly refused: “[w]e decline, based on the record in this proceeding, to change the Commission’s precedent by accepting street addresses of stockholders and banks as an indicator of the citizenship of beneficial owners.”⁵³

América Móvil contended that, in view of its examination of the registered addresses of its shareholders, there was no need for a survey or other inquiry to demonstrate the nationality of the holders of its stock. The Commission disagreed:

The Commission has never held that a common carrier radio licensee or applicant (or its direct or indirect controlling U.S. parent company) is relieved of the obligation to *ascertain and periodically survey the citizenship of its direct or indirect shareholders under section 310(b) of the Act* simply because it has determined that it is primarily owned and controlled by U.S. citizens or citizens of another WTO Member country. The obligation to monitor its shareholdings applies regardless of whether the ultimate controlling parent of the licensee is organized in the United States or, in the case of a common carrier licensee, in another WTO Member country where the ultimate parent has its principal place of business and for which the licensee has received a foreign ownership ruling under section 310(b)(4). In addition, the obligation applies to all stockholders not simply the controlling block.⁵⁴

The Commission eventually was able to grant the *América Móvil* application with extensive conditions, based on a finding that the shares analyzed using shareholder “registered

⁵² *América Móvil*, *supra*, at 6222-23.

⁵³ *Id.*

⁵⁴ *Id.* at 6222 (footnote omitted; emphasis added).

addresses” were almost all non-voting shares and that more than 93 percent of the voting rights were held by a trust controlled by a single family. Those conditions are not present, of course, for Verizon and Vodafone.⁵⁵

Petitioners acknowledge that, in its recent decision approving Verizon Wireless’s acquisition of Rural Cellular Corporation, the Commission permitted Verizon Wireless to demonstrate its qualifications under Section 310(b)(4) using registered and beneficial owners’ street addresses of record “in the special circumstances of the companies concerned.”⁵⁶ The “special circumstances” of applicants with widely dispersed public shareholdings, however, are fully addressed through the Commission’s longstanding policy of permitting public companies to establish their foreign ownership through statistically valid sample surveys. The Commission cannot change its current policy rejecting shareholder street addresses to establish a new definition of “foreign ownership” under Section 310(b) just for Verizon Wireless without overruling *América Móvil* and acknowledging that all applicants in all services may use the same definitions of “foreign ownership” that Verizon Wireless seeks to use here. Indeed, the Commission cannot otherwise reconcile this change with its recently-released Report and Order and Third Further Notice of Proposed Rulemaking in MB Docket No. 07-294 (“*Diversity*

⁵⁵ Verizon Wireless alleges that its approach to assessing the nationality of its shareholders is “similar” to that used by Mobile Satellite Ventures Subsidiary LLC in *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Commc’ns, Inc.*, Order and Declaratory Ruling, FCC 08-77 (Com’n, rel. March 7, 2008) [hereinafter “*MSV/ST*”]. See April 2008 Letter, at note 5. If the information provided to the Commission in *MSV/ST* was derived from “registered addresses,” it is obvious from the decision that the Commission was not aware of it. The decision in *MSV/ST* neither refers to information derived from “registered addresses” nor indicates in any way that the Commission has altered its express decision in *América Móvil* to reject the use of “registered address” information. To the contrary, the *MSV/ST* decision cites *América Móvil* with approval. See *MSV/ST*, *supra*, at 14, ¶ 25, note 129.

⁵⁶ *Verizon Wireless-RCC Order*, ¶ 149.

Order”), now on reconsideration.⁵⁷ In the *Diversity Order*, the Commission rejected a proposal by 29 organizations constituting the Diversity and Competition Supporters (collectively “DCSs”) and a broadcaster coalition to open new financing resources for SDBs by relaxing existing restrictions on foreign ownership, using its authority under Section 310(b)(4). The Commission declined to adopt the proposal, first, because it saw relaxation of foreign ownership restrictions as “an extraordinary step” and, second, because taking that step would require “a significant rulemaking proceeding to examine this issue in greater depth.”⁵⁸ Having rejected any liberalization of its foreign ownership standards and policies for SDBs, the Commission cannot reasonably accede to a new liberalized standard that applies only to Verizon Wireless.⁵⁹ As shown below, however, that is precisely what Verizon Wireless seeks.

Verizon Wireless’s approach to its Section 310(b)(4) showing amounts to a request that the Commission apply to Verizon an entirely different substantive standard for what constitutes foreign ownership under Section 310(b) than the one the Commission applies to potential SDB

⁵⁷ *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*.

⁵⁸ *Id.* at 5949.

⁵⁹ Under Congressional and Commission policies, the Commission has an obligation to relieve regulatory burdens on SDBs and other small businesses. It flies in the face of those policies for the Commission to provide a behemoth like Verizon Wireless with its own special liberalized procedures and its own special liberalized interpretation of the governing statute, while denying that flexibility to socially disadvantaged small businesses. *See e.g., Regulatory Flexibility Act*, 5 U.S.C. §§ 601-612 (2007); *Promoting Diversification of Ownership in Broadcast Services*, 23 FCC Rcd 5922 (2008); *Wireless E911 Location Accuracy Requirements*, 22 FCC Rcd 20105, ¶ 11 (2007); *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, 22 FCC Rcd 8064, ¶ 53 (2007), *Review of the Emergency Alert System*, 19 FCC Rcd 15775, ¶ 45 (2004). Indeed, the Small Business Paperwork Relief Act of 2002 directed federal agencies to “make efforts to further reduce the information collection burden for small business concerns. . . .” 44 U.S.C. § 3506(c)(4). Applying reduced information collection burdens to Verizon while continuing to impose far more onerous requirements on small businesses thus contradicts Commission and Congressional policy.

investors and other smaller companies that compete with Verizon Wireless and its affiliates in the media and telecommunications marketplace. For other applicants, the Commission considers “all relevant ownership interests up the vertical chain including ‘even small investments in publicly traded securities.’”⁶⁰ Thus, as the Commission’s *Foreign Ownership Guidelines* and the instructions to the Commission’s broadcast application forms make clear, the determination of an investor’s foreign ownership under existing Commission policy requires, among other things, analysis of whether a U.S. entity is in fact a subsidiary of a foreign entity, whether a corporation organized under one set of national laws is owned and voted by persons or entities of a different nationality, and whether all limited partners or LLC members of both direct and indirect investors are “insulated” or not.

Through application of these current policies, the interest of an investor or shareholder with a “registered address” in the United States or in a WTO-member nation nevertheless may be classified as foreign or non-WTO because of the nationality of underlying investors, or even the nationality of a single minority indirect investor in the ownership chain.⁶¹ The burden of obtaining this information precludes many sources of capital for potential SDBs. Under the test Verizon Wireless seeks to apply, Verizon Wireless not only would not analyze foreign ownership up the ownership chain, but would not even be required to identify the citizenship of

⁶⁰ *Foreign Ownership Guidelines*, International Bureau, DA 04-3610, 19 FCC Rcd 22612, 22625 (rel. November 17, 2004) [hereinafter “*Foreign Ownership Guidelines*”], citing *Foreign Participation Order, supra*, 12 FCC Rcd at 23941, ¶ 115. The Commission has taken the position that these standards apply “even when the alien’s ownership interest in non-influential in nature.” *Foreign Ownership Guidelines*, at 22625 n.29 (citing *Wilmer & Scheiner II*, 1 FCC Rcd 12, ¶ 7 (1986)).

⁶¹ For example, under the Commission’s current interpretation of Section 310(b), as the instructions to the Commission’s broadcast assignment form, FCC Form 314, make clear, a single non-insulated non-U.S. limited partner with a fraction of a percent interest in an investor can require that an investor be treated as entirely foreign, even if 99 percent of its capital is

the first level registered owner or first level beneficial owner. Indeed, it would simply rely upon a street address. Verizon Wireless does not even purport to have treated as “foreign” or as “non-WTO” shares that it would have reason to know should be so classified from the identify of the shareholder, so long as the shareholder had a street address in the U.S. or a WTO-member nation. Under this approach, for example, any shares of Verizon owned by Vodafone, a U.K. company, would be treated as entirely U.S.-owned, so long a Vodafone held the share through an affiliate with a U.S. street address. If Verizon Wireless can meet its Section 310(b)(4) by relying on the “registered addresses” of shareholders and immediate beneficial owners, it is not being held to the same legal standard that the Commission applies to its competitors or to SDBs seeking capital for telecommunications and broadcast investments.

The mere number of public shareholders in Vodafone and Verizon, moreover, cannot justify the approach that Verizon Wireless urges on the Commission. As Verizon Wireless acknowledges and as the *Foreign Ownership Guidelines* prescribe, the Commission traditionally expects that companies with widely dispersed shareholdings will conduct stock ownership surveys using a statistically valid sample of shares outstanding.⁶² The required sample size for a valid sample survey is not linearly related to the size of the population being sampled, and large populations may be assessed with small random samples. Given that the survey would cover only the extent to which sampled shares (1) are U.S.-owned or foreign-owned and, (2) for foreign owned shares, have WTO or non-WTO ownership, the size for a valid sample would be quite small in relationship to the total shares of Verizon and Vodafone outstanding. In light of the size of the transaction proposed in the Merger Applications, compliance would entail a far

provided by U.S. individuals and the non-insulated foreign partner has no voting or control rights. See FCC Form 314, Instructions, page 8, Item 9.

⁶² See also FCC Form 314, Instructions, page 8, Item 9.

more reasonable burden than that which the Commission routinely imposes on a socially disadvantaged business with multiple private investors. Verizon Wireless thus could have followed the *Foreign Ownership Guidelines* and selected a statistically valid sample of Verizon and Vodafone shares to analyze. Verizon Wireless has made no showing that the necessary sample size for a valid survey would have imposed burdens on Verizon Wireless materially different from those of socially disadvantaged businesses and other applicants that, unlike Verizon Wireless, are required to analyze the foreign ownership through multiple levels and use a far broader definition of "foreign ownership." Using a valid random sample of its shares outstanding, Verizon Wireless could have analyzed the ownership and control of those sample shares in the same depth that the Commission requires for its smaller would-be competitors and for SDBs. Verizon Wireless then would have faced the same risk as those smaller competitors and SDBs that ownership information or insulation status for some investors would be unavailable or denied to it, or that some investors with "registered addresses" in the United States or a WTO member nation would turn out to be owned or controlled in whole or in part in a way adverse to the grant of a Section 310(b)(4) determination.⁶³ Applicants other than Verizon Wireless that provided only investors' street addresses as the basis for compliance with Section 310(b) would have those interests treated as "unidentifiable foreign interests from non-WTO member countries."⁶⁴

⁶³ For example, a single non-insulated limited partner at a distant level can require that a sample share be treated as foreign owned and controlled. See FCC Form 314, Instructions, at page 8, Item 9; *Foreign Ownership Guidelines, supra*, at 22628 (the multiplier can be used to calculate foreign voting interests held in a parent company through an intervening limited partnership only if it can be demonstrated that any foreign investor in the limited partnership "effectively is insulated from active involvement in partnership affairs").

⁶⁴ See *Foreign Ownership Guidelines* at 22624.

By relying upon the “registered addresses” of Verizon and Vodafone shareholders under a special rule that only applies to it, Verizon Wireless seeks to ignore and bypass the very Commission rules and principles that thwart access of SDBs to capital and that the Commission refused to alter in its *Diversity Order*. The standard under the Verizon “special rule” permits Verizon Wireless to treat shares as entirely U.S. owned and controlled based on a “registered address” even if the shareholder is known to Verizon Wireless to be organized under the laws of a non-WTO foreign nation and entirely owned and controlled by citizens of non-WTO nations or by the sovereign wealth funds of those nations. If, in the *Diversity Order*, the Commission had granted SDBs the same privilege, it would have liberalized its foreign ownership policies to a much greater extent than it would have by granting the very modest relief that the DSC commenters sought. SDBs seeking to use foreign capital thus could have used indirect foreign capital, provided that either the registered owner or the immediate beneficial owner of a share of an SDB’s stock was an entity with a street address in the United States, such as a U.S. corporation or a U.S. limited liability company, without regard to indirect foreign ownership or control.

Petitioners submit that it is unreasonable for the Commission to apply one interpretation of “foreign ownership” under Section 310(b) to Verizon Wireless and another, stricter, definition of the same statutory provision to those seeking to compete with Verizon Wireless. Similarly, the basic definition of what constitutes “foreign ownership” under Section 310(b) must be uniform across the Commission services to which Section 310(b) applies. If the Commission requires SDBs and other small businesses to analyze the citizenship of all of their investors through multiple ownership levels, it must require Verizon Wireless to perform the same analysis with a statistically valid sample of the outstanding stock of its partners. If the Commission

instead permits Verizon Wireless categorically to presume the citizenship of its investors from street addresses without further analysis, it should permit SDBs and other small businesses to do the same. Having just entirely rejected any relaxation of foreign ownership policies whatsoever even for the supposedly priority goal of providing additional opportunity for SDB involvement in Commission-regulated industries, it would be arbitrary and capricious for the Commission, just months later, to affirm a special and highly liberalized interpretation of Section 310(b) that applies only to Verizon Wireless and is denied to would-be new market entrants and SDBs seeking to compete with Verizon Wireless in the media and telecommunications marketplace.⁶⁵

⁶⁵ *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965) (when the Commission makes contemporaneous decisions according different treatment to apparently similarly situated applicants, it must explain why it has treated the applicants differently); *Green Country Mobilephone, Inc. v. FCC*, 765 F.2d 235 (D.C. Cir. 1985) (“We reverse the Commission not because the strict rule it applied is inherently invalid, but rather because the Commission has invoked the rule inconsistently”); *New Orleans Channel 20, Inc. v. FCC*, 830 F.2d 361, 366 (D.C. Cir. 1987) (noting the “importance of treating parties alike . . . when the agency vacillates without reason in its application of a statute or the implementing regulations”); *McElroy Elec. Corp. v. FCC*, 990 F.2d 1351, 1365 (1993) (reminding the Commission “of the importance of treating similarly situated parties alike or providing an adequate justification for disparate treatment”).

VI. Conclusion

For all of these reasons, the Commission should deny the Merger Applications unless it conditions their grant as described above.

Respectfully submitted,

**CHATHAM AVALON PARK
COMMUNITY COUNCIL**

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Of Counsel

August 11, 2008

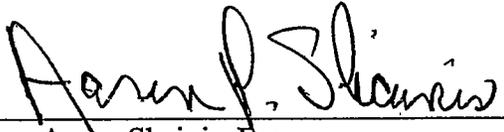
By: 
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EXHIBIT 1

**AFFIDAVIT OF KEITH O. TATE,
PRESIDENT
CHATHAM AVALON PARK COMMUNITY COUNCIL**

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Verizon Wireless and)	WT Docket No. 08-95
Atlantis Holdings, LLC)	
)	DA 08-1481
Applications to Transfer Licenses,)	
Spectrum Manager and <i>De Facto</i> Transfer)	ISP-PDR-20080613-00012
Lease Arrangements and Authorizations)	
and Request for Declaratory Ruling on)	
Foreign Ownership)	

To: The Secretary

**AFFIDAVIT OF KEITH O. TATE,
PRESIDENT
CHATHAM AVALON PARK COMMUNITY COUNCIL**

Keith O. Tate hereby submits this declaration, pursuant to Section 1.16 of the Commission's rules, 47 C.F.R. § 1.16 with the understanding that this declaration will be submitted to the Federal Communications Commission (the "Commission") in connection with a petition to deny the applications of Verizon Wireless and Atlantis Holdings, LLC, for Commission consent to the merger of Verizon Wireless with ALLTEL Wireless and its affiliates.

1. I am the President of Chatham Avalon Park Community Council (CAPCC). CAPCC is a broad-based grass-roots community membership organization founded in 1955 in Chicago, Illinois, to promote and protect the well-being of Chicago's Chatham Park Avalon Community and the civic growth of Chicago as a whole.
2. Since its founding, CAPCC has been in the forefront of major civic actions and other vital issues in Chicago. CAPCC and its representatives regularly appear before various departments and agencies of Chicago's government to address issues critical to maintaining civic life, promoting effective education, and providing essential services and security to Chicago residents, and promoting social justice and civic betterment. CAPCC joins regularly with other organizations representing Chicago's African-American Community to encourage citizen participation in local political action, and seeks to maintain the reputation of the Chatham Avalon Park Community for beauty, safety, civic action, and excellence.

CAPCC sponsors and works through a network of geographically-defined block clubs covering the whole of the Chatham Avalon Park Community.

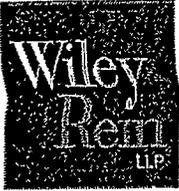
3. CAPCC favors economic development and business activity. It believes, however, that increased consolidation of the providers of telecommunications providers, by reducing competition and eliminating smaller and mid-size service providers, has had and will have a deleterious effect upon its members. Members of CAPCC reside in areas in which the combined Verizon Wireless-ALLTEL entity would have a commanding presence.
4. The absence of an adequate competitive spur from years of consolidation, CAPCC believes, causes telecommunications service providers to have less interest in the unique needs and the welfare of the communities they serve and less involvement with the people who live in them. For example, in the Chatham Park Avalon Community, which would be served by the Verizon Wireless-ALLTEL combined entity, neither Verizon Wireless nor ALLTEL have significant presence in terms of customer service centers or storefront operations. They do not have employees in the community, nor do they deal with community businesses in obtaining services for their own business. Because of this lack of involvement and understanding, service to the community suffers. Accordingly, CAPCC opposes the proposed merger unless the Commission imposes conditions its merger consent to require appropriate divestitures and to enhance competition and diversity of ownership in telecommunications services for the benefit of underserved communities such as the Chatham Avalon Park Community and other similarly situated communities in the greater Chicago area and in the proposed Verizon-ALLTEL service area as a whole.
5. In light of its interest in economic development and business activity, CAPCC also is concerned that larger entities have access to sources of capital that are unavailable to smaller businesses and socially disadvantaged businesses. 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 in obtaining capital that already exist in the marketplace. Consequently, it is important to the CAPCC that the Commission ensure that there are no short cuts available to larger companies that are not also available to socially disadvantaged businesses.

I state under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 7th day of August, 2008.

Keith O. Tate
Keith O. Tate

EXHIBIT 2

**Verizon Wireless Letter Dated April 8, 2008
In Docket No. 07-208**



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April 8, 2008

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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Applications of Rural Cellular Corporation and Cellco Partnership d/b/a
Verizon Wireless for Transfer of Control
WT Docket No. 07-208; DA 07-4192
File Nos. ISP-PDR-20070928-00011; OSP-PDR-20070928-00012

Dear Ms. Dortch:

Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless"), by its attorney, hereby provides additional information regarding its indirect foreign ownership.

As the Commission is aware, Verizon Wireless is a general partnership, of which 45 percent is indirectly owned by Vodafone Group Plc ("Vodafone") and the remaining 55 percent is indirectly owned by Verizon Communications Inc. ("Verizon"). As the Commission has previously recognized, Vodafone is organized under the laws of the United Kingdom, which is a Member of the World Trade Organization ("WTO").¹ In 2000, the Commission allowed Verizon Wireless to "be indirectly owned by Vodafone in an amount up to 65.1 percent" and authorized the transfer and assignment to Verizon Wireless of numerous common carrier licenses.² Since

¹ *Applications of AirTouch Commc'ns, Inc., Transferor, and Vodafone Group, Plc, Transferee, for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 14 FCC Rcd 9430, 9434 (¶ 9) (WTB 1999) ("[b]ecause the United Kingdom is a Member of the World Trade Organization (WTO), under the Commission's *Foreign Participation Order*, we presume that the public interest would be served by authorizing, under section 310(b)(4), common carrier radio licenses held by entities indirectly owned by Vodafone and citizens of the United Kingdom."). See also *Applications of Vodafone AirTouch Plc and Bell Atlantic Corporation for Consent to Transfer Control or Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd 16,507, 16,514 (¶ 18) (WTB/IB 2000) ("*Vodafone-Bell Atlantic Order*") (finding Vodafone's principal place of business continues to be the U.K.).

² *Vodafone-Bell Atlantic Order*, 15 FCC Rcd at 16,514 (¶ 19).



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the issuance of this ruling in 2000, the Commission has extended this authority on several occasions.³

Vodafone is a public limited company. As of February 29, 2008, Vodafone had 53,125,879,401 shares issued and outstanding. For purposes of determining the geographic distribution of the beneficial owners of these shares, Vodafone worked with UBS AG, an investment banking and securities firm and one of the largest global asset managers. On behalf of Vodafone and in connection with producing a share register of fund manager positions in the company, UBS obtained information regarding the beneficial owners of Vodafone shares using information obtained from Vodafone's Registrars and inquiries made pursuant to section 793 of the U.K. Companies Act 2006.⁴ Through this process, Vodafone was able to identify the beneficial owners of 96.68 percent of Vodafone's shares. For the beneficial owners of these shares, Vodafone determined each entity's citizenship to be the country identified in the owner's address of record.⁵ Further, for the unidentified shares,

³ See, e.g., *Int'l Authorizations Granted*, Public Notice, DA 08-790 (Apr. 3, 2008) (grant of authority in File No. ISP-PDR-20080212-0003 for Verizon Wireless' request to extend the existing foreign ownership ruling to Vista (Mirror 1) PCS License Holding, LLC and the common carrier wireless licenses it acquires); *Int'l Authorizations Granted*, Public Notice, 21 FCC Rcd 13,575 (2006) (grant of authority in File No. ISP-PDR-20060619-00015 for Verizon Wireless' request to extend the existing foreign ownership ruling to AWS and other Wireless Communications Services licenses Verizon Wireless may acquire in the future); *Applications of Northcoast Commc'ns, LLC and Cellco P'ship d/b/a Verizon Wireless*, Memorandum Opinion and Order, 18 FCC Rcd 6490, 6492 (¶ 6 & n.15) (Commercial Wireless Div. 2003) (finding that Vodafone's interest "ha[d] been previously approved by the Commission under section 310(b)(4)" and because "no changes have occurred in Verizon Wireless' foreign ownership since . . . these rulings[,] the applications raise no new foreign ownership issues").

⁴ The Companies Act 2006 (available at http://www.opsi.gov.uk/ACTS/acts2006/pdf/ukpga_20060046_en.pdf, and its predecessor, the Companies Act 1985) gives public companies the right (not an obligation) to investigate who has interests in its shares. Under separate regulations (the Disclosure and Transparency Rules), an investor who acquires voting rights over 3% or more of a public company's shares must disclose that fact to the company, which itself then must notify such interests to the stock market via a regulatory news announcement.

⁵ This approach of determining citizenship of a publicly traded company's shareholders based upon the address of record of each beneficial owner is similar to that taken by Mobile Satellite Ventures Subsidiary LLC in its recent petition for declaratory ruling approved by the Commission. See *Petition for Declaratory Ruling of Mobile Satellite Ventures Subsidiary LLC*, File No. ISP-PDR-20070314-00004, at 13, n.41 & 14, n.44 (filed Mar. 14, 2007); see also *In the Matter of Mobile Satellite Ventures Subsidiary LLC and SkyTerra Commc'ns, Inc.*, Order and Declaratory Ruling,



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Vodafone determined citizenship by extrapolating the citizenship allocation of the identified shares.⁶ Based upon the information obtained from UBS and the methodology just discussed, Vodafone determined that, as of February 29, 2008, approximately 54.21 percent of its shares were beneficially owned by citizens of the United Kingdom and 31.24 percent by citizens of the United States. Collectively, these numbers indicate that approximately 14.55 percent of Vodafone's shares are beneficially owned by citizens of neither the U.K. nor the U.S.⁷ Further, the information obtained by Vodafone indicates that this 14.55 percent of the company's shares is overwhelmingly held in WTO countries.⁸

Verizon is a publicly traded company organized under the laws of the United States. As of March 3, 2008, Verizon had 2,850,629,251 shares issued and outstanding, of

(Continued . . .)

FCC 08-77 (Mar. 7, 2008). This method provides a reasonable basis for determining citizenship. Especially given the very large number of Vodafone shares outstanding and the company's numerous shareholders, the instances where an owner's address of record might differ from its citizenship is likely to be insignificant. This method is thus more likely to yield accurate citizenship information than a citizenship survey of only a small portion of a company's shares – one option the International Bureau has noted might be used to determine a publicly traded company's foreign ownership for purposes of Section 310(b). See *Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Licenses*, 19 FCC Rcd 22,612, 22,642 (2004).

⁶ Pro-rating the relatively small number of unidentified shares based upon the citizenship allocation of the over 51 billion identified shares is a reasonable method for approximating the citizenship of the holders of the unidentified shares. This is especially true as these shares are unidentified precisely because their owners hold the stock in relatively small amounts (under the level for which UBS collects information). The unidentified shares are thus likely owned by a very large group of entities, whose citizenship likely mirrors the beneficial owners of the larger number of identified shares.

⁷ This information is consistent with the geographic distribution of shares reported in Vodafone's most recent annual report filed with the U.S. Securities and Exchange Commission. That report indicated that, as of March 2007, approximately 56.02 percent of Vodafone's shares were held in the U.K., 30.60 percent in North America, 12.38 percent in Europe (excluding the U.K.), and 1 percent in the rest of the world. Vodafone Group Public Limited Company, SEC Form 20-5, Annual Report for the Fiscal Year ended Mar. 31, 2007, at 152 (under Geographical analysis of shareholders section heading) (*available at* http://www.vodafone.com/etc/medialib/attachments/agm_2007.Par.44006.File.tmp/b52625_20F_1.pdf).

⁸ Based upon the information obtained from UBS, less than 0.02 percent of Vodafone's shares have beneficial owners with addresses of record in non-WTO countries.