BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
ATLANTIS HOLDINGS, LLC (Transferor)	)	
VERIZON WIRELESS (Transferee)	)	WT Docket No. 08-95
	)	
Applications for Consent to Transfer Licenses, Spectrum Manager and *De Facto* Transfer Leasing Arrangements, and Authorizations, and Request for Declaratory Ruling on Foreign Ownership	)	File Nos. 0003463892, *et al.*

To: The Commission, *en banc*

REPLY TO JOINT OPPOSITION

RITTER COMMUNICATIONS, INC. ("Ritter") and CENTRAL ARKANSAS RURAL CELLULAR LIMITED PARTNERSHIP ("CARCLP") (collectively "Arkansas Limited Partners"), by their attorney, respectfully submit their reply to the Federal Communications Commission to the opposition filed jointly by Cellco Partnership d/b/a Verizon Wireless ("VZW") and Atlantis Holdings LLC ("Atlantis") on August 19, 2008,[1] to the Petition to Deny (the "Petition") by the Arkansas Limited Partners in the captioned proceeding on August 11, 2008. While the Opposition is long on pejoratives on the issues raised by the Arkansas Limited Partners, it is short on meaningful explanation or analysis. In fact, the Opposition raises more questions than it answers. Accordingly, as requested in the Petition, the captioned application should be designated for hearing to resolve trafficking and character qualifications issues.

[1] Joint Opposition to Petitions to Deny and Comments, WT Docket No. 08-95, August 19, 2008 (the "Opposition" or "Opp."). The Petition filed by the Arkansas Limited Partners is discussed in Section IV.A, pp. 83-89, of the Opposition.

Moreover, and of at least equal importance, the Opposition totally fails to address the Arkansas Limited Partners' argument that the application papers should be rejected at the threshold, because they fail to demonstrate that Atlantis is not profiting from its decision to flip Alltel[2] to VZW almost immediately after Atlantis' acquisition of Alltel in late 2007. Longstanding public policy against treating licensed communications facilities simply as commodities to be bought and sold for profit, rather than operated to serve the public, counsels against grant of the applications on the present record. Indeed, the meager explanation Atlantis proffers for its conduct underscores that such policy is relevant and should be applied in this case -- *regardless* of whether Atlantis ultimately is determined to have deceived the Commission or trafficked in Alltel's licenses, as Atlantis appears to have done. The point in any event is that the record before the Commission is woefully inadequate for it to make the determination as to whether the proposed transaction is in the public interest, and therefore the Commission may not approve the transaction in its present form.

As their reply to the Opposition, the Arkansas Limited Partners respectfully show:

Introduction and Background

In their Petition, the Arkansas Limited Partners pointed out that the ink was barely dry on the Commission's approval of Atlantis' acquisition of Alltel before Atlantis was back seeking approval to flip Alltel to VZW. Atlantis did so despite its earlier representations to the Commission that the public would benefit from Atlantis' acquisition of Alltel in three discrete ways: (1) rural areas would get improved service; (2) advanced services would be deployed in rural areas;

[2] The term "Alltel" will be used herein to refer collectively to Alltel Corporation, its direct and indirect subsidiaries, and its affiliated partnerships, control of which is sought to be transferred in the applications before the Commission in this proceeding.

and (3) additional spectrum would be acquired for deployment of additional services to rural areas. Atlantis has done *none* of those things, a fact the Opposition avoids but does not contest.

Nonetheless, Atlantis now seeks the Commission's blessing to flip Alltel to VZW for an undisclosed but presumably substantial profit. The Arkansas Limited Partners therefore requested that the Commission designate the applications for evidentiary hearing to determine whether Atlantis has improperly trafficked in Alltel's licenses and lacks the character qualifications to be a licensee by reason of lack of candor or misrepresentations to the Commission. The Arkansas Limited Partners further requested that, irrespective of the outcome of the trafficking and lack of candor/misrepresentation issues, the transaction be rejected on its present record because the application papers do not demonstrate that Atlantis is not profiting from the proposed transaction.

The Opposition argues that the Petition does not make a *prima facie* showing that grant of the application is contrary to the public interest, and that the claims of the Arkansas Limited Partners are spurious and without factual or legal support.[3] As shown below, the Opposition is wrong on all counts. Moreover, although the Opposition goes on to proffer what it presumes is a benign explanation for the sequence of events in question,[4] the explanation in fact raises more questions than it answers and actually underscores the need for an evidentiary hearing to determine the facts surrounding Atlantis' acquisition of and decision to flip Alltel to VZW. Accordingly, the Opposition should be rejected in all respects and the Petition should be granted.

[3] *E.g.*, Opposition at p. 84.
[4] *Id.* at pp. 86-88.

Reply Argument

1. Contrary to Opposition Arguments, the Petition Establishes a *Prima Facie* Case that Trafficking and Lack of Candor/Misrepresentation Issues Should Be Designated for Evidentiary Hearing.

The Opposition trumpets that the Arkansas Limited Partners "have not provided a single, specific allegation of fact" in support of their argument that Atlantis appears to have trafficked in Alltel's licenses, as defined by Section 1.948(h)(i)(1) of the rules.[5] The Arkansas Limited Partners emphatically disagree. Apart from Atlantis' objective failure to live up to its promises to the Commission, as discussed in the Petition, the declarations of John Tisdale and Clinton Orr attached to the Petition demonstrate that Atlantis' behavior post-acquisition was fundamentally inconsistent with expected behavior by private equity investors. Equally inconsistent is the objective fact that Atlantis switched from the acquisition to the disposition mode almost immediately after acquiring Alltel, again conduct fundamentally inconsistent with Atlantis' professed intent to hold and develop Alltel. All of these very specific facts raise the strong and unambiguous inference that Atlantis did not in fact intend to hold and develop Alltel, as it represented to the Commission, but rather that Atlantis intended merely to flip Alltel for a profit.[6]

This inference is reinforced by widespread reports that VZW actually has been attempting to buy Alltel for at least the past two or three years,[7] suggesting the possibility that Atlantis knowingly gambled on its ability to flip Alltel to VZW for a profit. While the Opposition con-

[5] *Id.* at p. 84.

[6] Obviously, the inference raised by these facts is not conclusive; that is why a hearing must be held after appropriate discovery.

[7] Attached as Exhibit No. 1 are four examples of articles dated from 2005 until the present making reference to VZW's attempts: Allie Winter, Third time's a charm, RCR News, June 9, 2008 ("Verizon Wireless has wanted to purchase the carrier [Alltel] for sometime, saying no the first time and no the second time (the same time that TBG and GS did go through with the purchase)"); CellPhoneForums.net, "Verizon ready to snatch up Alltel?", February 25, 2007; Dieter Bohn, WMExperts, March 1, 2007 ("Verizon Looking to Buy Alltel?"); *id.*, March 5, 2007 ("Alltel: Won't Somebody Buy Us?"); MobileTracker, May 31, 2005 ("Rumor: Verizon Wireless to buy ALLTEL").

tends that the *most recent* negotiations for the acquisition began in April 2008,[8] it selectively omits to address whether there had been any contact or discussions involving the acquisition of Alltel prior to Atlantis' acquisition, or, if so, the substance of those discussions. The Opposition's selective discussion of the relevant circumstances itself underscores that there is a woefully inadequate record before the Commission for understanding exactly what happened, and therefore being able to intelligently pass on the merits of the captioned applications.[9]

The Opposition does, rather cryptically, proffer what it hopes is a benign explanation for Atlantis' behavior. In substance, the Opposition claims that because of the current credit crunch, (a) Atlantis could not raise as much debt and syndicated equity as it originally intended and thus had to invest more of its own equity to close the acquisition than it originally intended; (b) Atlantis could (only) raise "sufficient capital . . . to finance the growth and operations of ALLTEL *for several years*" (emphasis added) and to "participate in the 700 MHz auction"; and (c) the owners of Atlantis "are concerned that Atlantis Holdings may be constrained in the future (*e.g.*, four or five years from now) in its ability to raise the capital necessary to fund the costly, long-term investments necessary to grow ALLTEL's service in rural markets."[10]

At the risk of vast understatement, the "explanation" in the Opposition does not survive even superficial scrutiny. Given that private equity investors typically have an exit plan in mind over a 5 to 7 year period when they make an acquisition,[11] there is no apparent business need for Atlantis to have raised any more than "sufficient capital at the time of acquisition to finance the

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[8] Opposition at p. 87.

[9] The cases cited in the unnumbered footnote on p. 86 of the Opposition are not to the contrary. Both *In re Thomas K. Kurian, et al.*, 18 FCC Rcd 21949 (WTB 2003) and *In re Manahwkin Communications Corporation*, 17 FCC Rcd 342 (FCC 2001) are readily distinguishable on their facts; and the general proposition that generalized, unfounded and speculative allegations do not constitute a *prima facie* showing, while obviously correct, has no application here. *In re Applications of Celcom Communications Corporation, et al*, 61 R.R.2d (P&F) 353 (FCC 1986), was a comparative hearing case that did not even involve claims of trafficking or deceiving the Commission.

[10] Opposition at p. 87.

[11] *See* Petition at p. 5 and supporting Declaration of John Tisdale, Esq.

growth and operations of ALLTEL *for several years.*"[12] In a similar vein, even if there is a valid (but undisclosed) business reason to raise more capital than needed for the next "several years," the Opposition does not explain why "current market conditions" should dictate that Alltel be flipped to VZW right now.[13]

While predicting the length of a business cycle is obviously hazardous, the Arkansas Limited Partners are not aware and have not heard any forecasts that the current credit crunch will last nearly as long as four or five years, and the Opposition makes no such prediction or other showing that such a concern would be reasonable. Under these circumstances, even taking the Opposition's explanation at face value (which the Commission properly may *not*), the Opposition's vague and generalized references to a "concern" about capital market conditions four or five years in the future plainly is not an adequate explanation for Atlantis' unquestionably abrupt sale of Alltel to VZW.

The Commission also should take official notice that the credit crunch has been happening for approximately the past year or so.[14] Commission approval of the Atlantis acquisition of Alltel did not occur until October 26, 2007, and the closing occurred approximately a month later (according to the Opposition, after the disappointing "road show" by the banks to syndicate their debt financing for the acquisition). Section 1.65(a) of the rules expressly states:

> Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application. Whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall

[12] Opposition at p. 87. (Emphasis added).

[13] The Opposition does not explain what it means by "current market conditions," but the Arkansas Limited Partners assume that it is a reference to the current credit crunch and its effects in the capital markets.

[14] Attached as Exhibit No. 2 are three examples of published reports on the credit crunch dating back to July and August 2007: Ambrose Evans-Pritchard, Telegraph.co.uk, June 26, 2007 (Banks 'set to call in a swathe of loans'); Jay H. Bryson, Wachovia, August 3, 2007 (U.S: Credit Crunch – August 2007); Paul Litchfield, Seeking Alpha, August 12, 2007 (Mortgage Originated Credit Crunch May Just Be Beginning).

> as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate. Whenever there has been a substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, submit a statement furnishing such additional or corrected information as may be appropriate, which shall be served upon parties of record in accordance with Sec. 1.47. Where the matter is before any court for review, statements and requests to amend shall in addition be served upon the Commission's General Counsel. For the purposes of this section, an application is ``pending'' before the Commission from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court. [15]

The Opposition's evident reliance on the credit crunch to justify Atlantis' conduct thus raises the additional issue of whether Atlantis failed to comply with its Section 1.65 obligations to keep the information in its application complete and current, and to disclose "substantial changes . . . which may be of decisional significance". If, as the Opposition professes, TPG and Goldman Sachs were prescient enough to know in April 2008 that they should sell Alltel immediately, based on their prediction of what capital markets would be like in 4-5 years, then it should follow that they likewise knew -- well before Commission approval of their acquisition in October 2007 -- that the credit crunch would require major changes in their announced plans for holding and developing Alltel. At the latest, they surely knew it prior to closing on the Alltel acquisition, when the banks' road show in November 2007 failed to produce the desired results, a date that was still within the Section 1.65's reporting obligation window. Accordingly, again taking the Opposition's explanation purely at face value (which the Commission properly may not do), the issue of when did TPG and Goldman Sachs realize that the credit crunch would cause them to radically change course with their plans for Alltel, thereby potentially triggering a

[15] 47 C.F.R. §1.65(a) ("Substantial and significant changes in information furnished by applicants to the Commission").

Section 1.65(a) reporting obligation, also is a matter that must be explored in an evidentiary hearing before the Commission rationally may pass on the merits of the pending applications.

Moreover, the fact that Alltel filed a short form application for the 700 MHz auction has no probative value in this discussion. The objective fact is that Alltel did not buy any spectrum in that auction, and thus Atlantis did not follow through on its promise that its acquisition of Alltel would result in Alltel acquiring additional spectrum for the deployment of advanced services in rural areas. Beyond the obvious fact that Alltel was outbid in the auction,[16] the Opposition offers no meaningful explanation for Alltel's failure to obtain spectrum; and the detailed information about what happened during the auction is still secret, precluding scrutiny of Alltel's conduct. Accordingly, the mere fact that Alltel filed a short form application does not support an inference that Atlantis intended to hold and develop Alltel.

On the other hand, the part of the explanation in the Opposition that *may* ring true is its statement that "TPG and Goldman Sachs were not able to syndicate as much equity as had been originally anticipated *and thus funded a more significant portion of Atlantis' equity than they initially intended.*"[17] But what the Opposition does *not* admit is that having to invest more of their own equity to close the transaction drastically slashed the return on their investment that TPG and Goldman Sachs would likely realize if they held and developed Alltel. In other words, the most plausible inference from the limited "facts" disclosed by Atlantis (taking them at face value) is that TPG and Goldman Sachs decided to cut their "losses" by flipping Alltel to VZW. That is, the credit crunch drastically reduced the anticipated profitability of the acquisition, so

[16] The Opposition actually states, incorrectly, that "the auction prices proved too high". Opposition at p. 87. In fact, however, if auction theory is correct, the ultimate sales prices were *not* too high at all; rather, Alltel was simply unwilling to pay the necessary price for the spectrum. *Why* Alltel was unwilling to pay the necessary price might be pertinent but is not explained.

[17] *Id.* at p. 87. (Emphasis added).

TPG and Goldman Sachs may have decided – at the time they had to put more of their own equity into the deal or earlier – that they would simply flip Alltel to VZW for an immediate (but undisclosed) profit, rather than hold and develop Alltel for at most a meager (by Wall Street standards) return on their long term investment.

That explanation, however, is inconsistent with the explanation proffered in the Opposition, and raises the issue of whether Atlantis is continuing a pattern of misrepresentation and lack of candor to the Commission.

In this regard, the Commission may not blind itself to the fact that the full disclosure concepts embedded in Sections 1.17 and 1.65(a) of the rules, and which the Commission must rely upon in order to function,[18] too often are alien concepts on Wall Street, as we are reminded almost daily.[19] Under all of these circumstances, the Commission rationally may not simply accept the facile protestations of innocence in the Opposition, but rather must determine the truth via the crucible of an evidentiary hearing with full rights of discovery by interested parties.

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[18] *E.g., San Joaquin Television Improvement Corporation*, 2 FCC Rcd 7004, 7005 & ¶9 (FCC 1987) (In view of the fundamental importance of licensee truthfulness, the fact of a concealment or misstatement may have more significance than the actual fact concealed" and "we have explicitly refused to renounce our authority to consider even the most insignificant misrepresentation as disqualifying"), citing *FCC v. WOKO*, 329 U.S. 223, 227 (1946) and *Character Qualifications Policy Statement*, 102 F.C.C.2d at 1210-11.

[19] Attached as Exhibit No. 3 are three examples of articles concerning Wall Street scandals about failure to disclose material facts to retail investors: Joe Bel Bruno, washingtonpost.com, Three More Banks Settle In Bond Market Probe, August 22, 2008 (numerous financial institutions, including Goldman Sachs Group, settling investigation as to whether banks knowingly misrepresented that auction-rate securities were almost like cash when selling them to investors after the banks knew the market for such securities had collapsed due to the credit crunch); Gretchen Morgenson, nytimes.com, Telecom's Pied Piper: Whose Side Was He On?, November 18, 2001 (Salomon Smith Barney star analyst Jack Grubman publicly touting the virtues of telecom company stocks without disclosing firm's conflict of interest in receiving substantial investment banking fees from stock and bond transactions for the touted companies); Gretchen Morgenson and Patrick McGeehan, Wall Street Star May Face Suit By Regulators, *The New York Times*, January 4, 2003 (Merrill Lynch star analyst Henry Blodget investigated for publicly touting stock while privately disparaging them in email messages to Merrill Lynch colleagues). *See also, e.g.*, Heather Landy, After Merrill's Sale of Bad Debt, Few Have Followed, *The Washington Post*, August 26, 2008, pp. D1,D3 (referencing "the famously tight-lipped style of hedge funds and private-equity firms").

2. Contrary to the Opposition, the Offense of Trafficking is not Confined to Speculation in Unbuilt Facilities and Construction Permits.

The Opposition further claims in substance that Atlantis could not have trafficked in Alltel's licenses as a matter of law, because the offense of trafficking is confined to "the speculative acquisition and abusive sale of *unbuilt* licenses *obtained via lotteries or using auction preferences*, such as set-asides, installment payments, and bidding credits".[20] The claim is simply untrue.

The starting point for analysis, of course, is the language of the rule itself, which is controlling. Section 1.948(h)(i)(1) defines the offense of trafficking in relevant part as obtaining an "authorization" for the "principal purpose of speculation or profitable resale of the authorization rather than for the provision of telecommunication services to the public". An operating radio station license is no less of an "authorization" than is a bare construction permit. Moreover, there is no logical reason to confine the offense of trafficking to unbuilt stations, since, as explained in the next section, there is a longstanding public policy against treating licensed communications facilities as mere commodities to be bought and sold for profit. Instead, such profits as may be derived from communications facilities ordinarily are supposed to be derived from providing service to the public and not from buying the properties in order to flip them to new owners.

Nor do the cases cited in the Opposition help its position. The *Urban Comm* case[21] involved a request for waiver of Section 1.2111 of the rules (requiring payment of any balance due on installment payments, late fees, etc.) as part of a sale of PCS licenses to VZW. All the Wire-

[20] Opposition at p. 89. (Emphasis in original).
[21] *Id.* at p. 89 & n. 284, citing *Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from Urban Comm-North Carolina, Inc., Debtor in-Possession, to Cellco Partnership d/b/a Verizon Wireless*, 21 FCC Rcd 15050, 15059 & ¶22 (WTB 2006) ("*Urban Comm*").

less Bureau said is that the failure to repay the installment debt in full, under the particular facts of that case, is not the type of unjust enrichment that Section 1.2111 was designed to prevent. In other words, preventing unjust enrichment when an applicant avails itself of installment payments is *one example* of conduct the anti-trafficking rules are designed to prevent. But it is an obvious *non-sequitur* to argue, as the Opposition does, that it is the *only* type of conduct the anti-trafficking rules are designed to prevent.

Even more misplaced is the Opposition's citation to the *Commercial Spectrum Enhancement Act* rulemaking.[22] The Commission's reference to anti-trafficking in that case actually was to the Congressional intent in enacting Section 309(j) of the Communications Act, which is the Commission's auction authority. Again, it is a patent *non-sequitur* for the Opposition to argue, as it does, that preventing designated entities from unjust enrichment is the *only* form of trafficking prohibited by the rules. Indeed, from a public policy standpoint, it would be at least odd to say – as the Opposition evidently would have the Commission do -- that large and wealthy entities like TPG and Goldman Sachs may freely traffick in authorizations because they can afford to buy already operating communications facilities, but small, designated entities, who generally can only afford to buy authorizations for unbuilt facilities, may not.

Similarly misplaced is the Opposition's reference to the *2000 Biennial Regulatory Review*.[23] The anti-trafficking rule at issue in that case (Section 22.943) was cellular *service-specific,* had been adopted to deter speculation in licenses awarded by lottery, and had outlived its intended purpose to the extent licenses subsequently were awarded by auctions instead. But

[22] *Id.,* citing *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures (Order on Reconsideration of the Second Report and Order),* 21 FCC Rcd 6703, ¶3 & n. 8 (FCC 2006).

[23] *Id.,* citing *Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services (Report and Order),* 17 FCC Rcd 18401, 18346-48 & ¶¶70-74 (FCC 2002).

in eliminating that rule, the Commission simply relied on the obvious fact that "the cellular service-specific anti-trafficking rule set out in section 22.943 is unnecessary, given the presence of the anti-trafficking provisions of section 1.948(i), which is applicable to all services".[24] That citation thus does no more than beg the question of the applicability of Section 1.948(i) in this case, it does not answer the question.

The Opposition may well be correct that the anti-trafficking rules have never been applied to a transaction of this magnitude. But the unprecedented magnitude of the offense does not alter the underlying character of it. Trafficking is still trafficking, whether in a $28 billion transaction or a $28 thousand transaction.[25]

3. The Opposition Wholly Fails to Address the Petition's Argument that Allowing Atlantis to Profit from this Transaction Would Be Contrary to the Public Interest

Finally, the Arkansas Limited Partners point out that the Opposition entirely ignores the Petition's argument that the captioned applications should be rejected at the threshold because the record does not demonstrate that Atlantis is not profiting from its request for permission to

[24] *Id.* at ¶73.

[25] The Opposition's suggestion at p. 88 & n. 281, that the public benefits of the transaction are sufficient to make the finding that the transaction is in the public interest, is wrong both in fact and in law. The Arkansas Limited Partners respect both VZW's reputation as an operator and its worthy intentions in acquiring Alltel, but its exaggerated claims of merger-specific public benefits are not, in the end, especially weighty. As the Opposition otherwise acknowledges at p. 10 & n. 31, Alltel has stated it will deploy EVDO to 82% of its served population by the end of 2008 and has already started upgrading to EVDO Rev. A. Given that VZW will have to divest substantial portions of Alltel's network in any event if the acquisition proceeds, there is no way to meaningfully evaluate on this record just how much more quickly, if at all, the post-acquisition Alltel customers would see Rev. A rather than Rev. 0, -- not to mention that VZW overplays the public interest significance of having a Rev. A wireless broadband service rather than a Rev. 0 wireless broadband service. LTE is still "vaporware" as far as the public is concerned; and Alltel could allow ODI devices on its network without being bought by VZW. On the other hand, VZW does not offer, and has not committed to retain, the equivalent of Alltel's very popular "My Circle" plan, which could be eliminated for Alltel customers post-acquisition. In short, while there is little doubt that buying Alltel will result in VZW becoming bigger and more profitable, that does not by itself translate into a public benefit from the acquisition. More to the point here, the Commission has previously held that even substantial public benefits from a proposed license assignment do not obviate the need to resolve basic qualifying issues in an evidentiary hearing. *Northwestern Indiana Broadcasting Corporation,* 60 F.C.C.2d 205, ¶¶13-19 (FCC 1976). As the Commission stated in that case, an assignment proposal, "even one such as here proposed which may effect some worthy public interest," is *not* "an acceptable means of escaping a determination of the licensee's basic qualifications". (*Id.* at ¶18).

flip Alltel to VZW. The Arkansas Limited Partners respectfully submit that the Commission should reject the applications on that basis before the Commission even *reaches* the trafficking and misrepresentation/lack of candor issues, but in any event *regardless* of whether Atlantis ultimately is found to have trafficked in Alltel's authorizations or to have deceived the Commission.

As noted above, there is longstanding public policy against simply treating communications facilities as commodities to be bought and sold for profit, rather than operated (hopefully for a profit) to serve the public. This is reflected in various ways, including, *e.g.*, the traditional rule in the broadcast services and in the Specialized Mobile Radio service against transferring unbuilt facilities, at least for a profit; the current rule in the cellular service requiring the winner of a comparative hearing to operate the station for at least three years before transferring it; and the current rule for authorizations won by designated entities in an auction that they repay the pro rata value of the bidding credits if they transfer the authorization in less than five years.

The notion of preventing unjust enrichment is particularly applicable here. Even taking the Opposition's explanation at face value (which the Commission properly may not), Atlantis is fundamentally no different than a sub-prime mortgage lender that miscalculated what would happen in the real estate market and now has to be bailed out by the government. While the government may indeed agree to bail out the sub-prime lenders, there is no question about the lenders being able to *profit* as a result of the bailout; instead, the only question is how much of a "haircut" the lenders must agree to undergo in order to take advantage of the bailout.

So, here, it may be that TPG and Goldman Sachs miscalculated what would happen in the credit market after they applied for permission to make a highly leveraged buyout of Alltel, and now they want the Commission to bail them out of their miscalculation by simply letting them

flip Alltel to VZW for an undisclosed but presumably substantial profit. On its face the request is repugnant to public policy and should be decisively rejected by the Commission. The Commission instead should dismiss the application papers at the threshold.

As an alternative, after determining the relevant facts in an evidentiary hearing, the Commission could require Atlantis to disgorge its anticipated profit from the sale to VZW by, for example, having Atlantis make a "voluntary" contribution of those profits to the United States Treasury, in the same way that "voluntary" contributions to the United States Treasury are an integral part of consent decrees entered into by the Commission to resolve violations of its rules.[26] Before it can do so, however, the Commission must first determine what those profits are, as well as whether, as it appears, Atlantis has trafficked in Alltel's authorizations and has lacked candor in its dealings with the Commission and otherwise deceived the Commission.

Conclusion

For the reasons stated above, the Commission should reject the captioned transfer of control applications at the threshold because it would be contrary to the public interest in the circumstances presented for Atlantis to profit from the proposed sale of Alltel to VZW. The application papers therefore are deficient and should be summarily dismissed, because they fail to demonstrate that Atlantis will not profit from the proposed sale to VZW. Alternatively, after an evidentiary hearing to resolve the trafficking and lack of candor/misrepresentation issues and meting out appropriate punishment for any misconduct that has occurred, should Atlantis still be deemed qualified to be a licensee and the proposed transaction deemed otherwise to be in the public interest, Atlantis should be required to disgorge its anticipated profits from the transaction as a de-

[26] *Cf., e.g., Roy M. Speer*, 11 FCC Rcd 18393, 18428 (FCC 1996) (transfer of control application designated for hearing to determine if transferor had requisite character qualifications by reason of misrepresentations to FCC; an unauthorized transfer of control found but not intent to deceive, so forfeiture imposed for unauthorized transfer of control while consenting to larger transaction).

terrent to future attempts to profit from short-term flipping of operating communications facilities.

Respectfully submitted,

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