

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

In the Matter of)
)
Atlantis Holdings LLC,) **WT Docket No. 08-95**
Assignor/Transferor) **FCC ULS File Nos. 0003463892, et al.¹**
)
And)
)
Cellco Partnership d/b/a Verizon)
Wireless,)
Assignee/Transferee)
)
For Commission Consent to The)
Proposed Transfer Of Licenses And)
Other Authorizations Held By)
Subsidiaries and Partnerships of)
ALLTEL Corporation)

To: Chief, Wireless Telecommunications Bureau

REPLY

North Dakota Network Co. (“NDNC”), by its attorneys and pursuant to Section 1.939 of the Commission’s Rules and the Commission’s *Public Notice*, entitled “Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer of Licenses, Spectrum Manager and *De Facto* Transfer Leasing Arrangements, and Authorizations, and Request Declaratory Ruling on Foreign Ownership,” Mimeo DA 08-1481, released June 25, 2008 *modified by Order*, Mimeo DA 08-1733, released July 24, 2008, hereby replies to the “Joint Opposition to Petitions to Deny and Comments” (“Opposition”), filed by Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) and Atlantis Holdings LLC (“Atlantis”) on August 19, 2008. In support hereof, the following is shown:

¹ This file number has been designated the lead application. See *Public Notice*, Mimeo DA 08-1481, released June 25, 2008 at page 2 footnote 3.

**Verizon Wireless Lacks the Legal Qualifications To Acquire Control
Of The ALLTEL Properties**

1. In its “Petition to Dismiss or Deny” (“Petition”), NDNC demonstrated that Verizon Wireless lacks the legal qualifications to acquire control of the ALLTEL Corporation (“ALLTEL”) subsidiaries and partnerships because it has refused to enter into an intercarrier roaming agreement with NDNC at prices that are just, reasonable, and non-discriminatory, as required by the Commission’s decision in *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rule Making*, FCC 07-143, 22 FCC Rcd. 15,817 (rel. August 16, 2007) (“*CMRS Roaming Order*”).

2. As noted in the Petition, in the *CMRS Roaming Order* the Commission determined that “automatic roaming is a common carrier obligation for commercial mobile radio service (CMRS) carriers, requiring them to provide roaming services to other carriers upon reasonable request and on a just, reasonable, and non-discriminatory basis pursuant to Sections 201 and 202 of the Communications Act.”² Roaming is deemed to be “a common carrier service because roaming capability gives end users access to a foreign network in order to communicate messages of their own choosing.”³ According to the Commission, “when a reasonable request is made by a technologically compatible CMRS carrier, a host CMRS carrier must provide automatic roaming to the requesting carrier outside of the requesting carrier’s home market, consistent with the

² See, *CMRS Roaming Order*, at Para. Nos. 1 and 23.

³ See, *CMRS Roaming Order*, at Para. Nos. 1 and 25.

protections of Sections 201 and 202 of the Communications Act.”⁴ Services “covered by the automatic roaming obligation are limited to real-time, two-way switched voice and data services, provided by CMRS carriers, that are interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.”⁵

3. As further noted in the Petition, NDNC’s wireless systems (like the Verizon Wireless network) employ the Code Division Multiple Access (“CDMA”) air interface and, consequently, their respective systems are technically compatible. NDNC requested from Verizon Wireless an intercarrier roaming agreement for two-way switched services, but Verizon Wireless has refused to negotiate in good faith with respect to the rates. Instead, Verizon has insisted upon a roaming rate of \$0.20 per minute, when the prevailing roaming rate nationally is between \$0.05 and \$0.10 per minute. Upon information and belief, Verizon charges other roaming partners a rate in the \$0.05 per minute range. Verizon Wireless’ inflexible position clearly violates its obligations under the CMRS Roaming Order by demanding rates in excess of the \$0.05 to \$0.10 per minute industry norm.

4. NDNC submitted that a charge two to four times the industry norm is *per se* unlawful under Sections 201(b) and 202(a) of the Communications Act. It is clearly unjust and unreasonable within the meaning of Section 201(b); and clearly constitutes unjust or unreasonable discrimination in the provision of like services within the meaning of Section 202(a). Similarly, it constitutes an unreasonable preference or advantage in favor of Verizon Wireless and its preferred roaming partners (to the disadvantage of

⁴ See, CMRS Roaming Order, at Para. No. 2.

⁵ See, CMRS Roaming Order, at Para. Nos. 1 and 23.

NDNC and similarly situated carriers), in violation of Section 202(a). For these reasons, Verizon Wireless lacks the legal qualifications to acquire control of the subject ALLTEL properties.

5. In the Opposition, Verizon Wireless essentially concedes that it was dilatory in responding to NDNC's request for a CDMA roaming agreement, and attempts to downplay the unconscionable delays in negotiation that it caused. Verizon Wireless claims that any notion that it has refused to negotiate in good faith "is patently false;" that discussions between the parties began in 2007; that these discussions "accelerated in April 2008;" and that "on June 11, 2008, Verizon Wireless provided NDNC a proposed agreement to which NDNC has never responded."⁶ However, the truth is that Verizon Wireless violated the law.

6. Verizon Wireless indicated in the Opposition that it has two existing, legacy roaming agreements with NDNC – one that it inherited through the Verizon Wireless acquisition of GTE and one that it inherited through the acquisition of Airtouch.⁷ However, these agreements cover *only the portions* of the Verizon Wireless licensed service area acquired in the GTE/Airtouch transactions and were never with Verizon Wireless itself or with any of its other operating entities; and these agreements have never covered all of Verizon Wireless' national service area. These agreements also *are for analog service only, the same analog service that Verizon Wireless discontinued in February of 2008*. Stated another way, since the discontinuance of analog service, NDNC has had *no* roaming agreements with *any* of the Verizon Wireless operating entities – much less with Verizon Wireless itself.

⁶ Opposition, pp. 58-59.

⁷ Opposition, pg. 58 n. 185.

7. NDNC initiated its attempts to secure a CDMA roaming agreement with Verizon Wireless (as opposed to its acquired entities, GTE and Airtouch) on August 2, 2007. The ensuing months (until early April of 2008) were characterized by inactivity on Verizon Wireless' part; and during which the only Verizon Wireless roaming service provided to NDNC – analog roaming – *was discontinued*. NDNC responded to the draft agreement which Verizon finally provided on June 11, 2008. NDNC again told Verizon Wireless what it had been saying for some time – that the sticking point remains the rates.

8. Verizon Wireless also asserts that “[t]o the extent NDNC does not provide 3G services in its home market, its request for automatic broadband roaming is inappropriate and is actually a request for resale.”⁸ However, NDNC has never *requested* Verizon Wireless to provide home roaming for broadband services. NDNC only inquired as to whether or not Verizon Wireless *offered* such a service.

9. In the Opposition, Verizon Wireless asserts that “[g]iven the straightforward divestiture commitment and the additional time petitioners sought in order to ‘analyze’ the divestiture’s impact, it is disingenuous that the [petitions and comments] do not take the divestitures into consideration.”⁹ Other than a general announcement (contained in the July 22, 2008 *ex parte* filing) to the effect that divestitures will be made, there has been no firm commitment to divest any specific assets, no indication as to what parties will be eligible to purchase those assets, and no indication as to what type of roaming agreements will be available on the divested systems, post-divestiture. It is difficult to determine what the impact of the divestiture will be, especially if the new owner is not a

⁸ Opposition, pg. 62 n.197.

⁹ Opposition, pg. 37.

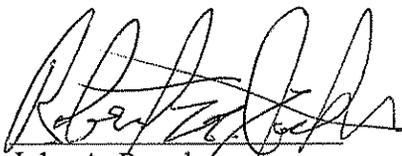
national carrier, as there apparently is no requirement that the new owner be a national carrier.

10. Finally, NDNC has never asked for roaming in its Broadband PCS licensed area (BTA 299). NDNC currently has 60 towers operating in BTA 299, and by 2010 will have the entire service area built out with some 83 towers. NDNC has asked only for a fair roaming agreement with Verizon Wireless for areas outside BTA 299, and never with the intention to obtain service in lieu of meeting the build out of its system.

WHEREFORE, NDNC requests that its Petition be granted; and that the Verizon – Atlantis transfer of licenses applications be dismissed or denied.

Respectfully submitted,

North Dakota Network Co.

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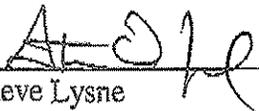
DECLARATION UNDER PENALTY OF PERJURY

I, Steve Lysne, hereby state the following:

1. I am the Chief Executive Officer of North Dakota Network Co.

2. I have read the foregoing "Reply." With the exception of those facts of which official notice can be taken, all facts set forth therein are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 26th day of August, 2008.



Steve Lysne

CERTIFICATE OF SERVICE

I hereby certify that I am an attorney with the law offices of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP and that on August 26, 2008 I caused to be sent by electronic mail (e-mail), a copy of the foregoing "**Reply**" to the following:

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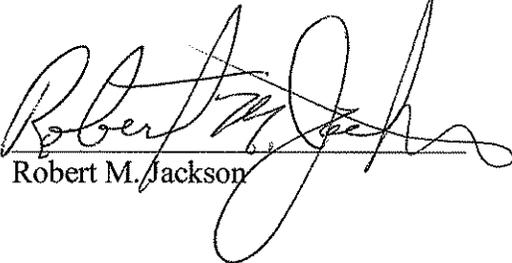
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