

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

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

**REPLY OF
METROPCS COMMUNICATIONS, INC. AND NTELOS INC.
TO JOINT OPPOSITION TO PETITIONS TO DENY AND COMMENTS**

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Dated: August 26, 2008

SUMMARY

MetroPCS Communications, Inc. (“MetroPCS”) and NTELOS, Inc. (“NTELOS”) (collectively, “Petitioners”) reply to the “Joint Opposition to Petitions to Deny and Comments” filed by Cellco Partnership d/b/a Verizon Wireless (“Verizon”), Atlantis Holdings LLC (“Atlantis”) and ALLTEL corporation (“Alltel”) (collectively, “Applicants”). In this reply, Petitioners explain that the concerns regarding roaming services raised by the Petitioners were not about the roaming market *per se*, but were directed to the reduction in competition in the local retail services market, and in particular a reduction in a critical input to that market--the provision of roaming service--that will occur as a result of removing Alltel from the market. In other words, because carriers rely upon roaming services in order to be able to compete at the local retail services market, the competitive harm caused by the reduction in roaming service will result in a reduction in competition at the local retail services market.

Even though industry roaming rates have fallen to \$0.05 per minute, and many retail plans now offer service at \$0.05 per minute or less, Petitioners are each required to pay Verizon multiples of \$0.05 per minute for roaming service. Therefore, as a direct result of this proposed transaction, Petitioners will be required to pay unjust, unreasonable and discriminatory roaming rates to Verizon, rates that are higher than they currently pay to Alltel. The conditions sought by Petitioners will not be addressed in the pending roaming proceeding because the pending proceeding will not address the specific and substantial competitive harms that would result from this proposed transaction and would not impose the narrowly tailored remedies proposed by Petitioners.

Verizon’s commitment to honor the Alltel roaming agreements for two years is illusory because it is unclear whether Verizon will actually honor Alltel’s agreement with MetroPCS, a

2-year commitment is not long enough to remedy the competitive harms caused by the transaction due to the many years before LTE will be fully deployed, Verizon has made no commitment to honor the Alltel roaming agreements while it negotiates new agreements, and it is unlikely that Verizon will offer the Alltel rates for in-market roaming even though Alltel charges the same rate for in-market roaming as for out-of-market roaming.

The roaming conditions requested by Petitioners are an appropriate and targeted method to address the competitive harms that will result from the proposed merger. The conditions are needed for the same reasons that conditions were imposed on the merger between Ameritech and SBC and the merger between GTE and Verizon. In both of those mergers, significant market participants were removed, which (1) increased the incentive and ability of the merged entities to discriminate against rivals and (2) eliminated important benchmarks for upstream supply of critical inputs. Unlike prior wireless mergers, it is the specific removal of Alltel as a competitor that causes the harm--hence, the precedents set in earlier mergers are inapplicable.

Lastly, the requested qualifications of the divestiture buyers are necessary to ensure that the divestitures serve their intended purpose. A divestiture to another nationwide carrier would still result in a reduction in competition because the divested property would be absorbed into the nationwide carrier's operations. Similarly, a divestiture to an entity that does not intend to operate the assets and vigorously compete would also result in a reduction in competition.

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MetroPCS Communications, Inc. (“MetroPCS”)¹ and NTELOS Inc. (“NTELOS”) (collectively, “Petitioners”), by their undersigned counsel and pursuant to the Federal Communications Commission’s (“Commission” or “FCC”) June 25, 2008 and July 24, 2008, *Public Notices* in the above-captioned proceeding, hereby submit their reply to the “Joint Opposition to Petitions to Deny and Comments” (“Joint Opposition”) filed by Cellco Partnership d/b/a Verizon Wireless (“Verizon”), Atlantis Holdings LLC (“Atlantis”) and ALLTEL Corporation (“Alltel”) (Verizon, Atlantis and Alltel, collectively, the “Applicants”).

I. Introduction

In their August 11, 2008 Petition of MetroPCS Communications, Inc. and NTELOS Inc. to Condition Consent or Deny Application (“Petition”), MetroPCS and NTELOS detailed the anti-competitive effects of the proposed merger of the Applicants and requested that the

¹ For purposes of this Reply, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its Commission-licensed subsidiaries.

Commission condition the grant of the applications in certain respects to mitigate those anti-competitive effects, or in the alternative, deny the applications. In their Opposition, the Applicants objected to the conditions sought by Petitioners, alleging, among other things that (a) this application proceeding is not the appropriate forum for addressing the issues raised in the Petition, (b) no anti-competitive harms will result from the proposed merger, and (c) the requested relief was not narrowly tailored to the alleged anti-competitive effects of the proposed merger. This Reply responds to those objections.

In their Opposition, Applicants claim that the roaming conditions requested by Petitioners would impose merger conditions on one party and not on other similarly situated parties, and thus the conditions would put the proposed merged company at a competitive disadvantage by subjecting it to burdens that no other party must observe. Although the conditions are only to be imposed on the Applicants, the conditions will not put them at a competitive disadvantage. In any event, any burdens imposed on the Applicants are outweighed by the public interest in fostering vibrant competition. Applicants also argue that the roaming issues are being addressed in the currently pending roaming docket,² and the parties will be subject to whatever industry-wide regulations are adopted. While there should be Commission action to address industry-wide roaming concerns, the Applicants' proposed merger creates additional concerns that must and should be addressed through merger conditions specifically tailored to the competitive harms raised by the proposed transaction.

As explained below, this particular proposed transaction will uniquely and seriously harm competition, and the conditions requested by Petitioners are narrowly tailored to mitigate the

² *In re Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 (2007) (“2007 Roaming Order”).

specific harms caused by the proposed merger. Since the harm to competition as well as the proposed remedies are merger-specific, they do not single out Applicants for any unfair regulatory treatment. As a result of the proposed merger, Petitioners would, absent the conditions requested herein, lose their ability to effectively compete in a fair marketplace, resulting in market failure and substantially reduced competition and competitive choice in a number of markets. The requested conditions are thus necessary to prevent market failure and preserve the wireless competitive marketplace.

II. By Taking Alltel Out of the Market, the Proposed Merger Will Result in the Unfair Loss of a Critical Upstream Supply Input.

In the Reply Declaration of Dennis Carlton, Allan Shampine and Hal Sider (“Reply Declaration”),³ Applicants state: “Several parties have raised concerns that the proposed merger will reduce competition in the provision of roaming services.”⁴ Applicants have missed the point made by Petitioners, however. As explained below, the concerns raised by Petitioners were not about the roaming market *per se*, but were directed to the reduction in competition in the local retail services market, and in particular a reduction in a critical input to that market -- the provision of roaming service -- that will occur as a result from removing Alltel from the market. This reduction in competition at the local retail services market will be a direct result of the proposed merger, and can and must be remedied by imposing conditions narrowly tailored at mitigating the competitive harm of the proposed merger.

As discussed in the Petition, the proposed transaction will not only remove Alltel as an independent participant in the wireless marketplace, but will also reduce an important source for an important input to the local retail services market. Because Alltel has offered more favorable

³ Joint Opposition, Attachment 1.

⁴ Joint Opposition at 27, ¶ 55.

roaming terms and rates than Verizon, and has offered roaming in situations in which Verizon has refused fair roaming, Alltel's presence in the market has provided critical competition for this important input, as well as a competitive benchmark over which to measure Verizon's rates. Roaming service is a critical supply input needed by all regional and local carriers in order to offer competitive local retail service in their respective markets.

Specifically, because regional and local carriers compete with the nationwide carriers, when a prospective customer is in the market to subscribe for local retail service, the customer considers not only the rates for local service, but the rates that the customer must pay when traveling to other areas. Moreover, since Verizon and others have national bundled rate plans, local competitors must in many instances offer similar national roaming plans in order to be competitive. If a local or regional carrier cannot offer competitive rates for roaming, the local retail service is not competitive from the customer's perspective. As a result, not only will the local or regional carrier be unable to sign up new customers, but will also be losing existing customers to nationwide carriers offering better roaming rates. In other words, losing Alltel as an upstream supplier of a critical supply input will result in market failure because it will harm the ability of regional carriers such as MetroPCS and local carriers such as NTELOS to effectively compete in the local retail marketplace. Further, since the other carriers will be diminished as a competitive force in the retail market, the proper measure of concentration in the market would inevitably result in a retail market dominated by national competitors with at most small and specialized players at the edges – which will place the HHI index far beyond what is acceptable as a competitive indicator.

The above analysis is not merely an academic exercise. It is very real, and the merger will directly harm competition. In the Reply Declaration, Applicants unequivocally state that

“roaming prices per minute have fallen from roughly \$0.80 per minute in 1995 to roughly \$0.05 per minute in 2007.”⁵ Although Petitioners are unable to reveal the specific roaming rates that they are each paying to Verizon as a result of non-disclosure provisions in their respective contracts, they can each individually state that the respective rates they pay are multiples of \$0.05 per minute. Petitioners believe one of the best ways the Commission can proceed is to require the Applicants to provide copies of all of their roaming agreements to the Commission and to all protesting parties pursuant to the protective order. This will allow the Commission to develop a factual record which will underscore Petitioners’ concerns and the need for the merger conditions they seek.

If the rates Petitioners are each paying are typical of Verizon’s roaming rates, then it is clear that losing Alltel as both a supplier of these critical inputs and as a competitive benchmark will result in even less competitive downward pressure on Verizon’s roaming rates, resulting in competitive harm at the downstream level for retail wireless services. But the analysis does not stop there. Applicants also state in the Reply Declaration that Verizon and Alltel are currently *net purchasers* of roaming minutes, and that post-transaction Verizon will be a *net seller* of roaming minutes. This change from *net purchasers* to *net seller* will be a direct result of the proposed transaction, and will eliminate *any* remaining incentive for Verizon to lower its roaming rates.

But that is not all. The Reply Declaration also states that “roaming accounts for a declining share of all wireless minutes and revenues.”⁶ Specifically, the roaming share of total revenues for all U.S. carriers has dropped from approximately 13-14% in 1995 to approximately

⁵ Joint Opposition at 29, ¶ 59; *see also id.* at 30, Figure 1.

⁶ Joint Opposition at 30, ¶ 60.

3% in 2007. What this means is that post-transaction, Verizon will have no incentive to compete for roaming revenues. Rather, its much stronger incentive will be to keep roaming rates high, thereby depriving regional and local companies of the critical supply input needed to compete effectively at the local retail level, thereby reducing competition and increasing the number of Verizon retail subscribers. Indeed, representatives of Verizon said as much to NTELOS during NTELOS's last roaming negotiation with Verizon.

On the other hand, if the respective rates that MetroPCS and NTELOS are paying Verizon for roaming are not typical of Verizon's roaming rates, and Verizon's typical roaming rate approximates the typical industry roaming rate of \$0.05 per minute, then Verizon is unreasonably discriminating against MetroPCS and NTELOS by charging each of them multiples of \$0.05 per minute. There is reason to believe that this may be the case. In their Reply Declaration, Applicants state: "Sprint . . . recently reached an agreement with Verizon Wireless that would extend the (low) rates in its current ALLTEL agreement through [redacted]. The agreement also lowers rates, provides volume discounts and extends the contract in Verizon Wireless served areas."² Although it is not clear what "low" means, it is reasonable to assume that "low" means \$0.05 per minute or less. In other words, there is *prima facie* evidence that MetroPCS and NTELOS must each pay Verizon a multiple of what Sprint will be paying Verizon, and since the only other benchmark – Alltel – is disappearing from the market, the Commission must conclude that the market will not be an adequate check on whether Verizon charges just and reasonable rates. Therefore, conditions are necessary and appropriate.

Discriminatory aspects aside, the respective roaming rates paid by MetroPCS and

² Joint Opposition at 35, ¶ 67. One of the conditions sought by Petitioners is the requirement that Verizon make copies of its roaming agreements with others available to requesting carriers. This condition would allow requesting carriers in this instance to determine whether they are being unlawfully discriminated against. Without that information, it is difficult, if not impossible, to determine whether that is the case.

NTELOS cannot be deemed to be just and reasonable, because they are multiples of rates paid by retail subscribers under many Verizon rate plans. As explained in the Petition, since there are no customer service, acquisition, handset, and individualized billing and collection costs associated with roaming service, the roaming rates must be far in excess of any just and reasonable rates. Simply put, since it is more expensive to provide a retail minute than a roaming minute, there is no way that Verizon can justify charging a competing carrier for roaming minutes at a level that is multiples of what Verizon is charging its customers for retail minutes, unless the purpose of such exorbitant charges is to place its competitors at an unfair competitive disadvantage.

Nevertheless, the Joint Opposition argues that if a customer is dissatisfied with the roaming rates in a market, it can go to another carrier, and thus “the carrier with the market power would reap no benefit from its exercise of that market power.”⁸ The fallacy with the Joint Opposition argument is that the carrier the customer switches to would be the carrier with the market power that is charging unreasonable roaming rates. Hence the carrier with the market power has every incentive to charge unreasonable roaming rates so as to unfairly win over the customers of its competitors. As a result, removing Alltel as a competitor not only removes a significant upstream supplier of an important input, it also encourages this type of unfair behavior. Both the removal of the upstream supplier and the unfair competitive behavior are merger-specific. Thus, the proposed conditions are essential to mitigate against the unfair competitive harm caused by such behavior.

Applicants also claim that the proposed merger will not affect the roaming market because roaming alternatives will remain post-transaction except for 20 counties in the country.⁹

⁸ Joint Opposition at 48.

⁹ Joint Opposition at 49-50.

This misses the point entirely. The market for roaming services is largely a national one, and post merger there will be only two carriers who are available to provide such service on a nationwide basis for CDMA. Moreover, customers are entitled to reasonable roaming wherever they may travel. In addition, the argument is a red herring, because the issue is not how many counties still have at least one other CDMA carrier (which may or may not agree to offer roaming on reasonable terms). Rather, the issue is the specific harm suffered by MetroPCS and NTELOS due to the loss of Alltel as an upstream supplier as well as due to the lack of competitive downward pressure on roaming rates.¹⁰

Further, unlike Alltel, Verizon has no incentive to enter into fair roaming agreements with others. Although Alltel provides service over a substantial geographic area, there is a substantial amount of the United States population that it did not serve. Since Alltel did not cover substantial portions of the United States population, it had the natural incentive to seek fair reciprocal roaming agreements with third parties, such as the Petitioners, to flesh out its roaming footprint. Indeed, because the Commission perceived that carriers needed each other to provide service in areas in which they did not cover (*e.g.*, reciprocal benefits), carriers would have the natural incentive to engage in market based roaming agreements.

Several recent developments, including the proposed merger, however, have resulted in critical changes in this market, especially as they relate to CDMA roaming. For example, Verizon has acquired several carriers which have expanded its geographic footprint reducing its need to enter into fair reciprocal roaming agreements. Further, Verizon and others have acquired substantial amounts of spectrum nationwide which now allow them to offer service anywhere in

¹⁰ As a practical matter, with the elimination of Alltel, the number of roaming suppliers over most of the nation will reduce to a duopoly. Going from three competitors to two will have a dramatic effect on the rates for roaming services – especially if one of the duopolists has a very favorable roaming agreement, thus precluding market forces from benefiting parties seeking a new or modified roaming agreement from one of the duopolists.

the United States. Indeed, Verizon itself now holds 22 MHz of 700 MHz spectrum nationwide. Finally, as a result of the proposed merger, the Applicants will provide coverage to well over 94% of the United States population.¹¹ These changes just since the *2007 Roaming Order* dramatically reduce Verizon's incentives to enter into reciprocal fair roaming agreements. That was not the case with Alltel, who was unable to acquire additional spectrum in the 700 MHz auction and had not acquired significant additional properties since the *2007 Roaming Order*. Accordingly, Alltel has every incentive to enter into fair reciprocal roaming agreements, and in fact it did so.

By taking Alltel out of the market, the Commission cannot be assured that the market will set just and reasonable rates for roaming and, if Verizon's prior behavior is any guide, it will not enter into just and reasonable roaming agreements in the future.¹² This need to enter into reciprocal roaming agreements to serve areas that a carrier could not otherwise serve was the foundation for the Commission's hands-off policy for roaming arrangements and its view that the market could be trusted to set rates that were just and reasonable. With the proposed merger, Verizon has none of these incentives and the conditions proposed by Petitioners to right these competitive harms are necessary.

III. The Conditions Sought by Petitioners Will Not Be Addressed in the Automatic Roaming Proceeding and Must Be Addressed Here

Applicants argue that the currently pending roaming docket will address the all of the roaming issues and thus the Commission should not address it here. That is untrue and an

¹¹ Pre-merger, Verizon already provides coverage to 94% of the U.S. population. Reply Declaration at 27, ¶ 56. Since one of the main purposes of the merger is to increase Verizon's coverage, and there are a number of counties that are covered by Alltel but not by Verizon, it is clear that Verizon's coverage will increase substantially above 94% of the U.S. population.

¹² Obviously a party's prior actions are the best gauge of what a party will likely do in the future. Since Verizon has already demonstrated that it intends only to offer rates that are unreasonable, the reduction in competition will only exacerbate this behavior, not remedy it.

attempt to hide the ball. The Petitioners understand that the pending roaming docket primarily will address the generic issue of whether carriers are required to provide in-market roaming. That decision will be applicable to all carriers and cell air interfaces -- GSM, CDMA, etc. -- not just the Applicants or CDMA. The Petitioners understand that other than a requirement that in-market roaming be provided on just and reasonable terms, the pending roaming docket will not address the specific and substantial competitive harms that would, without rate caps and a requirement to offer future services as they are deployed, would result from Applicants' proposed merger. The conditions sought by the Petitioners have been narrowly tailored to address only the issues raised by the proposed merger and not the broader implications being decided in the currently pending roaming docket.

Since the proposed merger of the Applicants will diminish the incentives for the Applicants to provide roaming services (and will eliminate a benchmark for roaming services), the conditions sought by Petitioners must be addressed in this proceeding. If not, regardless of what the Commission does in the currently pending roaming docket, the Applicants will be able to raise prices for a critical input of their competitors which will allow them to drive their competitors out of business. The requirement that the Applicants offer roaming services on just and reasonable rates will not suffice to address the effects of the proposed merger. Simply put, there can be no just and reasonable rates when Verizon has no incentive to provide roaming and the incentive of the only other national carrier has been removed as result of a sweetheart deal provided by the Applicants to the other national carrier. Further, without the necessary benchmark provided by Alltel in the market, Petitioners will have a decreased ability to determine whether the rates they are being charged are just and reasonable and to make a *prima facie* case for discrimination. What is needed in this context are rate caps and the other

conditions sought by Petitioners – all of which will ensure that competition will continue for local retail service by the small, regional, and local carriers.

IV. Verizon’s Commitment to Honor the Alltel Roaming Agreements for Two Years is Illusive.

Although Verizon has offered to “keep the rates set forth in ALLTEL’s existing agreements with each regional, small and/or rural carrier for the full term of the agreement or for two years from the closing date, which ever occurs later,”¹³ this offer is insufficient to mitigate the harm to competition and market failure that will be caused by the proposed merger. First, it is unclear whether this offer will apply to MetroPCS. Although MetroPCS is substantially smaller than the four nationwide carriers and sees itself as a regional carrier because its service coverage is limited to certain markets, it is unclear whether Verizon will place MetroPCS in the category of “regional, small and/or rural carrier.” Therefore, we do not know whether Verizon will honor the MetroPCS roaming agreement with Alltel, even for two years.¹⁴

Second, a two year commitment on the part of Verizon is not long enough to remedy the harm to competition and resulting market failure. Although the Joint Opposition argues that the technical necessity of roaming on a system with the same air interface will no longer be necessary with the advent of Long Term Evolution (“LTE”), and hence there will be increased competition in the provision of roaming with the advent of LTE,¹⁵ Verizon and others will only begin to roll out LTE in two years from now.¹⁶ Just as the rollout of Evolution Data Only

¹³ Joint Opposition at 56.

¹⁴ Not only are Petitioners concerned, but other carriers such as T-Mobile have raised similar concerns. . See Reply Comments of T-Mobile USA, Inc, WT Docket No. 08-95, at 6-7 (filed Aug. 19, 2008). See also, e.g., Petition of Leap Wireless International, Inc. to Deny, WT Docket No. 08-95, at 18-20 (filed Aug. 11, 2008); Petition of Roaming Coalition to Deny, WT Docket No. 08-95, at 26-18 (filed Aug. 11, 2008); Petition of National Telecommunications Cooperative Association. to Deny, WT Docket No. 08-95, at 5 (filed Aug. 11, 2008).

¹⁵ Joint Opposition at 53-54.

¹⁶ Reply Declaration at 41-42, ¶ 81.

(“EVDO”) began in 2003¹⁷ and is still not complete after five years from the initial launch,¹⁸ it will take at least as many, if not more, years to roll out LTE. Moreover, if Petitioners experience with Verizon on EVDO is any indication, Verizon is likely to refuse to engage in LTE roaming just as it has refused EVDO roaming. Since the rollout of LTE cannot possibly have any effect on the competitive harm resulting from the elimination of Alltel as a supplier of roaming minutes until LTE is substantially deployed by multiple carriers, the conditions requested by Petitioners must be in place for many years.¹⁹ Further, there can be no assurance that AT&T, Verizon and Sprint will deploy LTE on any particular time table.²⁰ As a result, Petitioners requested a reasonable ten year roaming condition in their Petition.

Third, the Joint Opposition states: “Verizon Wireless’ policy is not to terminate roaming arrangements. Typically month-to-month roaming agreements will remain in place until one of the parties seeks to negotiate different terms and the parties reach a new agreement.”²¹ In addition to not being indicative of past experience with Verizon, the problem with this assertion is that it is not a commitment to do anything. The only commitment is the insufficient 2-year

¹⁷Verizon Wireless to Launch EVDO Wireless Internet, RDSL (America), 2003 WLNR 4282760, March 18, 2003.

¹⁸ The Verizon EVDO network covers only 80% of the U.S. population. RCR Wireless Newscast Excerpt from VIDEO: Who Has the Best 3G Network? July 21, 2008 (“RCR 3G Article”). However, the Verizon CDMA network covers 94% of the population, Reply Declaration at 27, ¶ 56, and considerably more of the area than the EVDO network. RCR 3G Article.

¹⁹ If the five years for incomplete EVDO deployment is used as a benchmark with the starting place in 2010, the rollout of LTE would last at least beyond 2015 (or 7 years from today).

²⁰ The fact that Applicants cite LTE as a solution for roaming competition undercuts their argument that there is sufficient competition for the roaming input. Since LTE would be deployed by three or four carriers, Verizon has in effect conceded that a duopoly is not enough competition for the provision of roaming services.

²¹ Joint Opposition at 56.

commitment to honor the Alltel roaming agreements, and even then it is unclear whether Verizon will honor the roaming agreement between Alltel and MetroPCS.²²

Fourth, the Joint Opposition states: “Verizon Wireless negotiates nationwide roaming agreements and does not typically distinguish rates based on the geographic area served.”²³ However, the rates do vary according to the area served. The distinction between in-market and out-of-market roaming is very much a distinction in roaming rate that is market-dependent. Because Alltel did not distinguish between in-market and out-of market roaming for the purpose of roaming rates, taking Alltel out of the market of providing this important upstream supply input, there is no question that the resulting substantially higher roaming rates the Petitioners must pay in their home markets is a serious competitive harm and market failure that is transaction-specific. Moreover, it is highly unlikely that Verizon will honor the Alltel roaming rates for in-market roaming, further rendering the Verizon 2-year commitment illusive.

V. Other Arguments Against Roaming Conditions Found in the Joint Petition Have Little Weight

The Joint Opposition argues that “retail-level competitive market pressures will ensure that roaming rates are just and reasonable.”²⁴ If there were some reasonable relationship between retail rates and roaming rates, which there is not, Applicants might have an argument. As discussed earlier, however, the respective roaming rates charged by Verizon to MetroPCS and NTELOS are multiples of Verizon’s retail rates. In reality, therefore, the “retail-level competitive market pressures” cited by Applicants have the exact opposite effect. Verizon

²² Of course, Verizon could have offered to leave in place existing Alltel roaming agreements until new agreements are negotiated. What Verizon has proposed, however, can be circumvented by Verizon merely requesting to renegotiate the existing Alltel agreements.

²³ *Id.* at 51.

²⁴ Joint Opposition at 46.

knows that a regional carrier like NTELOS needs reasonable roaming rates in order to fashion rate plans that are attractive to consumers. By denying reasonable roaming, Verizon can weaken or eliminate regional carriers from the local marketplace.

The Joint Opposition argues that “when a requesting carrier seeks to use a competitor’s spectrum rather than build out and initiate service in its own market, that requesting carrier seeks resale, not ‘home roaming.’”²⁵ Not only are Applicants playing a game of semantics, they lose that game. Petitioners do provide facilities-based service to their customer, and those customers receive service from other carriers when not in their home carrier’s service area. That is the essence of roaming. The fact that areas outside the home carrier’s service area can be within the same arbitrarily defined geographic market does not change the fact that the customer is receiving roaming service outside of the home carrier’s service area.²⁶ Moreover, contrary to Applicants’ argument, carriers do not market outside of where they have built coverage.

The Joint Petition makes the well worn argument that “allowing carriers to deny roaming agreements to competitors with spectrum in the same market fosters competition because it enables carriers to differentiate themselves on the basis of superior coverage, and it encourages competitors to build out facilities in the home market.”²⁷ Petitioners already explained the fallacy of this argument in their Petition.²⁸ Due to capital constraints, competitors often do not have the capability to build out an entire network at once. Rather they need to build out on a

²⁵ Joint Opposition at 61.

²⁶ The Commission has used a variety of license areas -- such as MSAs, RSAs, MTAs, BTAs, BEAs and REAGs. Even setting aside whether each reflects the true nature of the competitive market, to a large extent the geographic area licensed is an artifact of Commission policies rather than decisions by the carrier. For example, a carrier wanting to serve the Dallas metroplex in the 700 MHz auction had only three choices -- BEA, CMA or REAG, each of which may either be too large or too small depending on a carrier’s business plans.

²⁷ Joint Opposition at 61.

²⁸ Petition at 15-28.

gradual basis as subscribership increases. The Commission's build-out rules specifically contemplated this very real problem by providing for lengthy build-out periods.²⁹ Home roaming is essential so that competitive service can be offered during the build-out period. As mentioned earlier, by taking out Alltel as a competitor, this proposed transaction eliminates an important upstream supply of home roaming. Thus, the competitive harm is merger-specific.

The Joint Petition argues: "Verizon and other carriers are more likely to negotiate broadband data roaming agreements where the requesting carrier has implemented broadband technology in a significant portion of its market providing a reciprocal benefit to the roamed-on-carrier. . . . [I]f carriers can no longer be assured that they will be able to differentiate themselves from their competitors through advanced services, carriers' incentives to invest in developing and deploying such services will be significantly diminished."³⁰ However, this argument is insensitive to the consumer. As discussed in the Petition,³¹ a subscriber will not understand and will be frustrated if he or she can roam on voice, but not on data services. In general subscribers are not telecommunications attorneys or engineers and should not be forced to live with artificial distinctions. Requirements that will result in subscriber confusion and frustration are contrary to the public interest.

Moreover, the fundamental policy goal supporting roaming extends to all communication services, whether they are classified as CMRS, telecommunications service or information service, regardless of their speed, technology, or platform, and regardless of whether or not they are interconnected. Therefore, the same conditions that apply to voice roaming, should apply to

²⁹ Further, the Commission has implemented construction requirements for all licenses. These construction obligations are sufficient and were found to be in the public interest. Any additional requirement here would not be justified.

³⁰ Joint Opposition at 63.

³¹ Petition at 28-31.

data roaming. Further, this argument obfuscates the real point which is that Applicants have no incentive to enter into any roaming agreement after the proposed merger, much less one concerning broadband data services. Since Verizon already covers 94% of the population,³² Verizon has no need for other carriers, and regardless of whether carriers deploy broadband data, Verizon has no incentive to provide roaming services for voice or data.

VI. Roaming Conditions to the Merger as Requested by Petitioners are an Appropriate and Targeted Method to Address the Competitive Harms that Will Result from the Merger.

The Commission's guiding principles for merger review can be found in the order approving the merger between SBC Communications Inc. ("SBC") and Ameritech Corp. ("Ameritech"), wherein the Commission stated:

We conclude above that the proposed merger of SBC and Ameritech poses significant potential public interest harms by: (a) removing one of the most significant potential participants in local telecommunications mass markets both within and outside of each company's region; (b) eliminating an independent source for effective, minimally-intrusive comparative practices analyses among the few remaining major incumbent LECs as the Commission implements and enforces the 1996 Act's market-opening requirements; and (c) increasing the incentive and ability of the merged entity to discriminate against rivals, particularly with respect to advanced services.³³

As a result the Commission adopted conditions to "significantly mitigate any potential public interest harms."³⁴ In particular, the Commission found that:

[S]everal commitments will alleviate the concern that the merged firm will use its combined size and market power to discriminate more effectively against its rivals in its in-region markets for local services as well as advanced services. . . . The conditions that we adopt today are carefully targeted at the types of discrimination the merger was otherwise most likely to engender. . . . The

³² Reply Declaration at 27, ¶ 56.

³³ *Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14854-55 (1999) ("*Ameritech*"); see also *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14143 (2000) ("*GTE*").

³⁴ *Ameritech*, 14 FCC Rcd at 14887.

combined entity's incentive to discriminate, stemming from its larger geographic footprint, is especially likely, if left unchecked, to translate into an ability to discriminate against the provision of advance services.³⁵

The proposed merger is very similar to the Ameritech-SBC merger in that (a) the merger affected critical upstream inputs to a local retail market, and (b) the acquired party was an important source of competition and considered the more flexible of the merging parties. Here, the Petitioners identified the particular competitive harms that would result from the proposed merger – that is unjust and unreasonable and discriminatory roaming rates, a refusal to offer in-market roaming at reasonable rates, and a refusal to offer data roaming.

Just as the Commission recognized that the loss of Ameritech and the loss of GTE in their respective mergers would result in the removal of significant market participants and increase the incentive and ability to the merged entities to discriminate against rivals and eliminate important benchmarks, the competitive harms discussed by Petitioners are a direct result of the proposed transaction. The harms resulting from the proposed transaction are different from and more significant than other recent wireless transactions examined by the Commission. It is the result of the size of the proposed transaction when combined with the cumulative effect of prior transactions that results in competitive harm. Unlike prior mergers, it is the specific removal of Alltel as a competitor that causes the harm – a problem that did not exist for earlier transactions where there were either more remaining competitors or the entity being acquired was smaller with less market power. Therefore, Commission orders for other recent mergers such as the AT&T acquisition of Dobson³⁶ or the Verizon acquisition of Rural Cellular Corporation,³⁷ are based on completely different fact patterns, and hence are not appropriate precedents.

³⁵ *Id.* at 14889-90; *see also* *GTE*, 15 FCC Rcd at 14195, 14199.

³⁶ *Applications of AT&T Inc. and Dobson Communications For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20295 (2007) (“*AT&T-Dobson*”).

The roaming conditions proposed by the Petitioners were specifically requested and narrowly drawn for the purpose of mitigating these harms caused by the removal of Alltel as a competitor as well as a supplier of an important upstream product. As the Commission stated recently in the order approving the merger of AT&T with BellSouth:

The Commission has the authority to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction. Indeed, our public interest authority enables us to impose and enforce conditions based upon our extensive regulatory and enforcement experience to ensure that the merger will, overall, serve the public interest.³⁸

Because the roaming conditions requested by Petitioners meet this standard of “narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction,” the Commission should impose the requested roaming conditions.

VII. Conditions Regarding the Qualifications of the Divestiture Buyers are Necessary to Ensure that the Divestitures Serve Their Intended Purpose.

Petitioners requested that any divested assets not be sold to (a) any of the national carriers or (b) anyone not already offering wireless services and committed to owning and operating the assets for at least five years after closing. Petitioners further requested that a priority be given to divest assets to CDMA operators. The Joint Opposition argues: “No basis exists to restrict the eligibility of potential acquirers of divested properties, and the Commission should, as it has in countless transactions in the past, allow market forces to determine an appropriate solution.”³⁹

However, the Commission should enact the conditions requested by Petitioners to prevent market failure resulting from the competitive harms caused by the proposed transaction. For

³⁷ *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation*, WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-181 (rel. Aug. 1, 2008) (“*Verizon-RCC*”).

³⁸ *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5674-75 (2007).

³⁹ Joint Opposition at 41.

example, if the divestiture buyer is one of the nationwide carriers, the nationwide carrier would merge the purchased markets into its already existing operations, and thus would not be providing a substitute competitor for Alltel. Similarly, if the divestiture buyer is not committed to operating the purchased market, it also would not be providing a substitute competitor for Alltel. In other words, the qualifications of the divestiture buyer make all the difference as to whether the divestiture will be meaningful.

The fact that such conditions have not been placed on divestiture buyers in the recent past does not mean it cannot be done for this transaction, since in this particular transaction, such conditions are essential for the divestiture remedy to be meaningful. As mentioned above, it is the specific action of taking out Alltel as a competitor that causes the harm – a problem that did not exist for earlier transactions where there were either more remaining competitors or the entity being acquired was smaller with less market power. Therefore, Commission orders for other recent mergers such as the AT&T acquisition of Dobson⁴⁰ or the Verizon acquisition of Rural Cellular Corporation,⁴¹ are based on different fact patterns, and hence are not meaningful precedents.

Moreover, the Commission must provide guidance as to the qualifications of a divestiture buyer at this time, not at the time the divestiture buyer seeks Commission consent to acquire the assets. By providing guidance at this time, the divestiture trustee will know who would not be accepted as a buyer and act accordingly. On the other hand, if the Commission does not consider threshold qualifications for a divestiture buyer until after the divestiture transaction is presented to the Commission, the Commission would be put in the untenable position of needing to require

⁴⁰ *AT&T-Dobson*, supra note 26.

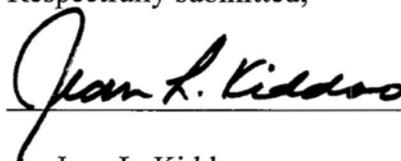
⁴¹ *Verizon-RCC*, supra note 27.

the divestiture trustee to start all over again and look for a different buyer without having provided guidance to the divestiture trustee in the first instance. Further, by placing conditions now, the Commission can do it as part of the approval of the proposed transaction and as a part of the package to alleviate the competitive harm caused by this transaction. Otherwise, it will have to develop a similar record in the divestiture proceeding which will require duplication of Commission efforts and waste scarce Commission resources.

VIII. Conclusion

For the reasons stated herein and in the Petition, Petitioners respectfully request that the Commission condition grant of the transfer of control applications as requested in the Petition, or in the alternative, deny the applications.

Respectfully submitted,



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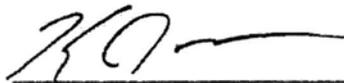
Dated: August 26, 2008

VERIFICATION

I, Ken Jessen, am the Director, Carrier Relations for MetroPCS Communications, Inc. I am a resident of the State of Texas, over the age of 18, and competent to make this verification in support of the attached Reply Of MetroPCS Communications, Inc. And NTELOS Inc. To Joint Opposition To Petitions To Deny And Comments ("Reply").

I hereby verify under penalty of perjury that I have read the foregoing Reply, and that the statements contained therein are true, complete, and correct, except for the statements uniquely pertaining to NTELOS Inc., and as to those statements I make no assertions.

Executed on August 26, 2008



Ken Jessen (signature)

VERIFICATION

I, Mary McDermott, am the Senior Vice President-Legal and Regulatory Affairs for NTELOS, Inc. I am a resident of the Commonwealth of Virginia, over the age of 18, and competent to make this verification in support of the attached Reply Of MetroPCS Communications, Inc. And NTELOS Inc. To Joint Opposition To Petitions To Deny And Comments ("Reply").

I hereby verify under penalty of perjury that I have read the foregoing Reply, and that the statements contained therein are true, complete, and correct, except for the statements uniquely pertaining to MetroPCS Communications, Inc., and as to those statements I make no assertions.

Executed on August 26, 2008


Mary McDermott (signature)

CERTIFICATE OF SERVICE

I, Carolyn L. Washington, hereby certify that on this 26th day of August, 2008, I caused copies as indicated below of the Reply of MetroPCS Communications, Inc. and NTELOS Inc. to Joint Opposition to Petitions to Deny and Comments in WT Docket No. 08-95 by first class mail (or, where indicated, by email) delivery on the following individuals:

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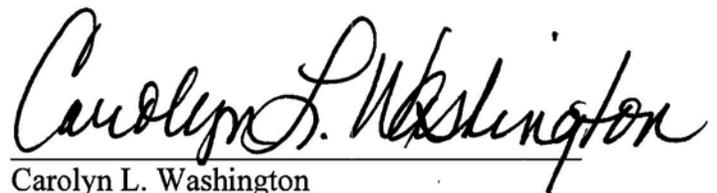
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