

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20544**

In the Matter of	)	
	)	
Applications of Verizon Wireless and	)	
Atlantis Holdings LLC for Consent	)	
to Transfer Licenses, Spectrum Manager	)	WT Docket No. 08-95
and <i>De Facto</i> Transfer Leasing Arrangements,	)	DA 08-1481
and Related Authorizations	)	

**REPLY COMMENTS OF THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

The South Dakota Public Utilities Commission (“SDPUC”) submits these comments regarding the applications of Cellco Partnership d/b/a Verizon Wireless, with its wholly-owned subsidiary AirTouch Cellular (collectively, “Verizon Wireless”), and Atlantis Holdings LLC (“Atlantis Holdings”), to transfer control to Verizon Wireless of Atlantis Holdings’ interests in various authorizations, licenses and leases held by ALLTEL Corporation (“ALLTEL”), and its related entities (collectively, “Applicants”). The SDPUC has a strong interest in this proposed transfer as Verizon Wireless and ALLTEL are the dominant wireless carriers in the state of South Dakota.

**STANDARD OF REVIEW AND PUBLIC INTEREST ANALYSIS**

Pursuant to sections 214(a) and 310(d) of the Communications Act of 1934, as amended (“Communications Act”),<sup>1</sup> the Commission must determine whether the Applicants have demonstrated that the proposed acquisition of ALLTEL would serve the public interest, convenience, and necessity. The Commission has found that “[t]he public interest standards of sections 214(a) and 310(d) involve a balancing process that weighs the potential public interest harms of the proposed transaction against the potential

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<sup>1</sup> 47 U.S.C. §§ 214(a), 310(d).

public interest benefits.”<sup>2</sup> It is the Applicants who “bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.”<sup>3</sup>

The Commission has recognized and incorporated into its public interest evaluation the broad aims of the Communications Act and has found that these aims “include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest.”<sup>4</sup> The FCC’s analysis of the public interest “may also entail assessing whether the merger will affect the quality of communications services or will result in the provision of new or additional services to consumers.”<sup>5</sup>

In its consideration of the competitive effects of a merger, the Commission not only considers whether the merger will reduce existing competition, it also looks to “whether the merger will accelerate the decline of market power by dominant firms in the relevant communications markets and the merger’s effect on future competition.”<sup>6</sup> In order to ameliorate market power concerns, the FCC is able to impose conditions, including the divestures of licenses along with customers and associated facilities.<sup>7</sup>

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<sup>2</sup> Applications of Western Wireless Corporation and ALLTEL Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13602-03 ¶ 17 (July 19, 2005) (“*ALLTEL-Western Wireless Order*”).

<sup>3</sup> *Id.* at 13063 ¶ 17.

<sup>4</sup> *Id.* at 13064 ¶ 19.

<sup>5</sup> *Id.* at 13064-65 ¶ 19.

<sup>6</sup> *Id.* at 13065 ¶ 20.

<sup>7</sup> *Id.* at 13065-66 ¶ 21; *see also* Section 303(r) of the Communications Act which authorizes the Commission to prescribe restrictions or conditions, not inconsistent with law, that may be necessary to carry out the provisions of the Act. Similarly, section 214(c) of the Act authorizes the Commission to attach to the certificate “such terms and conditions as in its judgment the public convenience and necessity may require.”

A number of entities have filed petitions to deny or impose conditions on the proposed merger. The SDPUC agrees that some of the proposed conditions should be imposed in order to ensure the preservation and enhancement of competition in the state of South Dakota.

### **ISSUES OF CONCERN**

As set forth in their filing, it is the Applicants' position that the proposed merger will not significantly harm competition in any product market.<sup>8</sup> The Applicants contend that Verizon Wireless and ALLTEL have "complementary footprints, with ALLTEL strong in the center of the country where Verizon Wireless lacks facilities."<sup>9</sup> Although this may be true for some areas, in South Dakota, Verizon Wireless has a fairly extensive network that directly competes with ALLTEL. As the two dominant wireless carriers operating in South Dakota, Verizon Wireless' and ALLTEL's combined market share is very significant. Thus, the SDPUC was not surprised by the letter filed by Verizon Wireless on July 22, 2008, wherein it stated that, after discussions with the Department of Justice, Verizon Wireless has offered to accept divestiture in 85 cellular markets, including the entire state of South Dakota.<sup>10</sup>

A common concern raised by Petitioners requesting denial or conditions regarded roaming. Although the SDPUC has not taken a position on whether the proposed transaction should be approved, we also have concerns regarding roaming. If the transaction is approved and assuming divestiture of South Dakota will be required, the SDPUC requests that the Commission consider our concerns when making its decision.

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<sup>8</sup> Application, Exhibit 1 at 29.

<sup>9</sup> *Id.*

<sup>10</sup> Verizon Wireless Ex Parte Letter, filed July 22, 2008.

The Applicants state that Verizon Wireless will honor ALLTEL's current CDMA and GSM roaming agreements.<sup>11</sup> The Applicants claim that this commitment will ensure "that other carriers' customers will continue to enjoy roaming service."<sup>12</sup> Verizon Wireless also addressed this issue in its July 22, 2008 letter. Verizon Wireless made the following commitments to regional and small wireless providers:

First, each such regional, small and/or rural carrier that has a roaming agreement with ALLTEL will have the option to keep the rates set forth in that roaming agreement in force for the full term of the agreement, notwithstanding any change of control or termination for convenience provisions that would give Verizon Wireless the right to accelerate the termination of such agreement. Second, each such regional, small and/or rural carrier that currently has roaming agreements with both ALLTEL and Verizon Wireless will have the option to select either agreement to govern all roaming traffic between it and post-merger Verizon Wireless.

More recently, in their response to the various petitions to deny or condition the merger, the Applicants have now 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."<sup>13</sup> The SDPUC appreciates the Applicants' concessions but they are not sufficient to allay our roaming concerns.

Assuming South Dakota will be divested, these assurances would not even apply if the acquiring company does not have an existing agreement. Thus, we seek commitments that Verizon Wireless will enter into a roaming agreement with the acquiring company in order to ensure that wireless customers in South Dakota do not suffer from a reduction in wireless coverage. Further, we seek assurances that any roaming agreement will be on terms that are reasonable, non-discriminatory, and encompass a sufficient term of years.

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<sup>11</sup> Application Exhibit 1 at 17

<sup>12</sup> *Id.*

<sup>13</sup> Applicants' Joint Opposition to Petitions to Deny and Comments at 46.

The SDPUC supports a condition that eliminates the in-market automatic roaming exception. The SDPUC recognizes that the Commission has declined to mandate automatic roaming in markets where the CMRS carrier directly competes with the requesting CMRS carrier.<sup>14</sup> In rejecting automatic roaming for in-market areas, the FCC expressed concerns that such a requirement could lead to less build-out by competing carriers. However, the simple fact is that in a sparsely populated state such as South Dakota roaming allows the state's wireless customers to receive better coverage. Although the Applicants state in their response comments that "the acquirer of the divested properties will have the spectrum and facilities necessary to serve the divestiture market without roaming,"<sup>15</sup> the SDPUC points out that Verizon Wireless currently roams off the ALLTEL network in South Dakota. It is obvious that Verizon Wireless itself recognizes the benefits to its subscribers of a roaming agreement with ALLTEL in South Dakota in order to ensure sufficient levels of coverage.

Adequate levels of wireless coverage are crucial in any area for a wide array of safety and economic reasons, and are especially important for rural areas. Thus, while waiting for build-out to occur, especially in sparsely populated areas, South Dakota consumers should be able to receive the benefits that accompany roaming. In short, a condition that the Applicants would be required to enter into a roaming agreement with the acquiring company, including for in-market areas, would help to ensure that South Dakota consumers are able to receive adequate access to wireless services.

The SDPUC also agrees with those entities that are requesting that the Commission require the provisioning of 3G and other broadband services on an

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<sup>14</sup> Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817, 15835 ¶ 13 (2007) ("Roaming Report and Order").

<sup>15</sup> Applicants' Joint Opposition to Petitions to Deny and Comments at 58.

automatic roaming basis. The ability of our South Dakota consumers to have access to mobile data and broadband services will enhance our state's economic development, especially in rural areas. This requirement would assist in ensuring competitive markets in South Dakota.

In the event of a divestiture requirement for South Dakota, the SDPUC further requests that the Commission require the Applicants to offer divested assets in reasonably small geographic areas. This would allow more entities the opportunity to buy the divested assets. If offered as large geographic areas, then smaller, regional buyers, such as rural carriers, may be excluded from attempting to purchase these holdings. The SDPUC believes that the offering of smaller geographic areas may help further the Commission's goal of ensuring a diversity of license holdings.

The SDPUC urges the Commission to carefully consider the effects of this proposed merger on South Dakota consumers. As competitors, ALLTEL and Verizon Wireless have invested in and built towers throughout South Dakota. The SDPUC has worked with both companies in order to address consumer concerns and improve coverage throughout the state. The SDPUC appreciates the willingness of both companies to listen to and respond to our concerns. The SDPUC hopes that, if the proposed transaction is approved, it will be conditioned in such a way that it will not detrimentally affect wireless carriers' future investment in their networks in South Dakota, including the obligations undertaken by ALLTEL when it received ETC designation to build out throughout its entire service area within a reasonable time.

## CONCLUSION

The SDPUC appreciates the opportunity to submit comments in this proceeding. In its evaluation of the public interest, we respectfully request that the Commission take our concerns into consideration.

Respectfully submitted,

The South Dakota Public Utilities Commission

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August 26, 2008

## CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the South Dakota Public Utilities Commission and that on August 26, 2008 I caused to be sent by electronic mail (e-mail), a copy of the foregoing "**Reply Comments**" to the following:

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