

**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.**
)
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 TO JOINT OPPOSITION

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Summary

The proposed merger of Verizon Wireless and ALLTEL (the nation's second largest and fifth largest competitors in a marketplace that is already highly concentrated) will have a profound impact on regional and small carriers and their customers. Allowing one dominant company to hold both 800 MHz cellular licenses in many rural markets, when local competitors depend on this dominant carrier to provide the voice and data roaming services their customers require, confers inordinate market power on the resulting cellular monopoly. The Commission can and should redress this disparity by imposing conditions on the merger to prevent anticompetitive harm to rural and regional wireless carriers and their customers.

Growing concentration in the wireless industry and FCC precedent require the FCC to evaluate the competitive effects of this proposed transaction on a CMA-by-CMA basis where there is an overlap of Verizon Wireless and ALLTEL holdings. Even if Verizon Wireless ultimately divests ALLTEL's entire cellular spectrum holdings in the 85 CMA markets where it has offered to do so, the Company will still have an attributable interest in all of the cellular spectrum in 68 CMAs, including 42 MSAs and 26 RSAs. The Commission should not hesitate to impose further divestiture obligations where the potential for anticompetitive harm exists.

The FCC should also impose conditions on the transaction that would require the merged entity to offer reasonable roaming rates and terms to competing wireless carriers, and to require that the merged entity offer roaming for 3G data and other services on reasonable terms, in foreign markets as well as on a "home roaming" basis. If the Joint Opponents believe that the consequences of a merger on roaming must be resolved in the rule making context, then the Commission should postpone any action on the instant application until after these important

issues have been resolved in the pending rule making. The Commission should also use this opportunity to protect consumers from anticompetitive practices involving wireless handsets.

Finally, the FCC should impose conditions on the transaction that would require the post-merger entity to provide cost justification if it is to retain ALLTEL's continued, massive high cost USF draw. This condition is warranted given ALLTEL's status as the largest high cost fund recipient and the \$10 Billion in transaction-related savings which Verizon Wireless touts.

The proposed merger of Verizon Wireless and ALLTEL is one of the largest transactions that will ever take place in the mobile wireless industry. It is therefore incumbent on the FCC to address the concerns that rural and regional service providers have raised before granting approval for the proposed transaction. Failure to do so will result in irreparable harm to rural and regional carriers and their customers.

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The Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of its clients listed in Attachment A hereto (the “Rural Carriers” or “Petitioners”) and pursuant to Section 1.45 (c) 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, hereby submit their reply to the Joint Opposition filed by Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”), Atlantis Holdings LLC

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.

(“Atlantis”) and ALLTEL Corporation (“ALLTEL”) (collectively “VZW/ALLTEL” or the “Joint Opponents”). In support hereof, the following is shown:

In reviewing the record in this proceeding, a number of common themes are evident and point to a single inescapable fact. The proposed merger of Verizon Wireless and ALLTEL (the nation’s second largest and fifth largest competitors in a marketplace that is already highly concentrated) will have a profound impact on regional and small carriers and their customers.² Allowing one dominant company to hold both 800 MHz cellular licenses in many rural markets, when local competitors depend on this dominant carrier to provide the voice and data roaming services their customers require, confers inordinate market power on the resulting cellular monopoly. The Commission can and should redress this disparity by imposing conditions to prevent anticompetitive harm in the wireless roaming and handset markets, by requiring Verizon Wireless to provide cost support for all USF support currently received by ALLTEL, and by imposing divestiture conditions that include not only the 85 cellular markets where Verizon Wireless has offered to accept divestiture, but also in any other CMA markets where commenters have demonstrated that divestiture would be in the public interest.³

² See, e.g., Comments of the Rural Cellular Association (“*RCA Comments*”) *passim*; Petition to Dismiss or Deny of the Ad Hoc Spectrum Coalition (“*PISC Petition*”) *passim*; Petition to Deny of Cellular South, Inc. (“*Cellular South Petition*”) at pp. 7-23; Petition to Deny of the National Telecommunications Cooperative Association (“*NTCA Petition*”) at pp. 2-8.

³ The Rural Carriers note VZW/ALLTEL’s criticism that it is “disingenuous” that several petitioners did not “take the [proposed 85-market] divestitures into consideration” in discussing the impact of the proposed merger. Joint Opposition at p. 37. However, the Rural Carriers explicitly cited to Verizon’s July 22, 2008 *ex parte* letter offering to be subject to a divestiture condition for these markets, and commended VZW/ALLTEL’s offer in this regard. Rural Carriers Petition at p. 9. However, the *ex parte* letter did not commit VZW/ALLTEL to divest the overlap markets unconditionally, and this offer does not arise to the level of a *fait accompli* unless and until the Commission orders VZW/ALLTEL to proceed with divestiture. Indeed, VZW/ALLTEL itself acknowledges this fact in the Joint Opposition (at p. 36 n. 107): “The only outstanding issue is *whether* and how the divestiture process will unfold.” (Emphasis added). Thus, these petitioners’ efforts to urge that the Commission order a divestiture process were not disingenuous.

I. The Competitive Effects of the Proposed Verizon Wireless – ALLTEL Merger Must Be Assessed at a CMA Level

In its August 11, 2008 Petition to Condition Transaction Approval, the Rural Carriers demonstrated that a local market – in particular, the Cellular Market Area (or “CMA”) – is the relevant geographic area for assessing the competitive effects of a merger between mobile wireless service providers. The Commission has consistently used CMAs as the basis for its competitive analysis in the context of proposed mergers and acquisitions in the wireless industry,⁴ yet VZW/ALLTEL urges the FCC to ignore this established precedent. Instead, the Joint Opponents urge the Commission to “judge the impact of the proposed transaction on competition on a nationwide basis rather than on any arbitrary localized basis,”⁵ and they dismiss valid precedent cited by the Rural Carriers and others critical of the proposed merger as “dated.” They also claim that “no evidence has been filed refuting the Applicants’ showings that strong national forces limit the potential for either unilateral action or coordinated interactions by carriers at the local level.”⁶

The Commission must reject the Joint Opponents’ urgings to ignore the local market when analyzing the competitive effects of the proposed merger. The use of CMAs in this

⁴ See Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, *Memorandum Opinion and Order*, 22 FCC Rcd 20295 at 20309 ¶ 23 (2007) (“*AT&T–Dobson Order*”); Applications for the Assignment of License from Denali PCS, L.L.C to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C to General Communications, Inc., WT Docket No. 05-114, *Memorandum Opinion and Order*, 21 FCC Rcd 14863 at 14876 ¶ 27 (2006); Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., WT Docket No. 05-339, *Memorandum Opinion and Order*, 21 FCC Rcd 11526 at 11542-43 ¶¶ 29-30 (2006); Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, *Memorandum Opinion and Order*, 21 FCC Rcd 7358 at 13990 ¶ 56 (2006); Applications of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053 at 13070 ¶ 35 (2005); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522 at 21562-63 ¶¶ 89-90 (2004).

⁵ *Joint Opposition* at p. 18.

⁶ *Id.*

context is far from arbitrary. In an Order issued earlier this month, the FCC said that “CMAs represent the fact that the Commission’s licensing programs have to a certain degree shaped this market by defining the initial areas in which wireless providers had spectrum on which to base service offerings, and they may therefore serve as a reasonable proxy for where consumers face the same competitors.”⁷ Moreover, as discussed below, if a competitor is a national carrier but does not extend its coverage footprint into a particular CMA, customers that suffer from anticompetitive consequences in that CMA gain no relief from a national competition analysis. It is inexplicable for the Joint Opponents to characterize decisions cited by the Rural Carriers and others as “dated” when these same cases were cited with approval by the FCC in the *Verizon-RCC Order*.

The Rural Carriers do not dispute the existence of competition on a national level among certain companies in the wireless market, nor that there is a plethora of advanced wireless products and services available for the customers of nationwide carriers as a result of such competition. However, focusing on the nationwide market misses the point when assessing the injury to CMA-level competition that is certain to result if the merger is permitted to move forward without adequate safeguards. Only a dwindling number of nationwide players have access to this nationwide market, and rural and regional carriers are forced to compete on a smaller geographic scale – often on the basis a single CMA or a cluster of CMAs. This makes such smaller carriers dependent on an ever-shrinking pool of mega-carriers when they seek to offer roaming (both in-market and nationwide roaming) and other voice and data services that their customers demand. In CMAs where Verizon Wireless and ALLTEL are competitors, this

⁷ See 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 (August 1, 2008) (“*Verizon-RCC Order*”) at Note 151.

competition has helped to ensure the availability of automatic roaming services for small and regional carriers, and just as important to keep rates for such services in check. But no amount of competition on a national level will serve to protect small and regional carriers in CMAs where the proposed merger will eliminate this competition. This is especially the case where the most mature and robust networks are generally those that utilize the cellular bands. As one petitioner has observed, approval of the merger as proposed will give Verizon Wireless control of an attributable ownership interest in 50 MHz of cellular spectrum in all or parts of 163 CMA markets, including 53 MSAs and 110 RSAs.⁸ Even if Verizon Wireless ultimately divests all of the ALLTEL cellular spectrum in the 85 CMA markets where it has offered to do so, the Company will still have an attributable interest in all of the cellular spectrum in 68 CMAs, including 42 MSAs and 26 RSAs.⁹ In spite of the Commission's elimination of the cellular cross-interest rule in 2004, a cellular monopoly remains especially problematic in rural markets. As the Wireless Telecommunications Bureau recently observed:

Although economic theory dictates that there is not a static threshold by which a reduction in competitors results in anticompetitive harm, a consolidation in a local cellular market from duopoly to monopoly status provides consumers with less choice and potentially less benefits from competition. The likelihood of the Commission approving a cellular consolidation between two providers in such conditions remains small.¹⁰

While the Commission has apparently approved of local cellular monopolies in a handful of cases,¹¹ the Rural Carriers find it significant that none involved granting cellular monopolies in

⁸ See Petition to Deny of Cellular South, Inc., dated August 11, 2008 (“*Cellular South Petition*”) at p. 15.

⁹ *Id.*

¹⁰ Applications of E.N.M.R. Telephone Cooperative For the Unserved Area Cellular Licenses to Serve Portions of New Mexico RSAs 1 & 2 on Frequency Block A, File Nos. 0002299667 and 0002299670, *Order*, DA 07-1061, 22 FCC Rcd 4512 (2007) at ¶5, Note 13 (*emphasis added*).

¹¹ See *RCA Comments* at pp. 7-8 (citing to ALLTEL's acquisition of local cellular monopolies in CMA172 Lincoln Nebraska, CMA492 Minnesota 11 – Goodhue, CMA512 Missouri 9 – Bates, CMA599 Oklahoma 4 – Nowata, CMA658 Texas 7 – Fannin, and CMA686 Virginia 6 – Highland)

such a large number of local markets or to a carrier that enjoys such dominant nationwide and local market share as Verizon Wireless.

The competitive landscape of the wireless industry has not changed in the three weeks since the Commission adopted the *Verizon-RCC Order*, or since it set forth its CMA-based mode of analysis in the *AT&T-Dobson Order*.¹² The FCC must therefore retain the CMA as its focus when evaluating the competitive effects of the proposed Verizon Wireless – ALLTEL merger, and adopt protective measures to redress the injury to competition that will be manifest at a CMA level.

In their criticism of the Rural Carriers' *Petition to Condition Transaction Approval*, the Joint Opponents argue that the pool of available mobile wireless spectrum has been raised above the 280 MHz level endorsed by the Commission in the *AT&T-Dobson Order* and the *Verizon-RCC Order*.¹³ Yet four pages later, the Joint Opponents argue at great length (with graphs and economists' statements) to support their argument that the 280 MHz pool is dated and that AWS spectrum, BRS/EBS spectrum and MSS/ATC spectrum should also be considered input spectrum for CMRS (*i.e.*, raising the total pool of CMRS spectrum to 646 MHz). Thus, the Joint Opponents have implicitly conceded that 280 MHz is the current input level. If the Joint Opponents believe so strongly that the current screen mechanism must be replaced, a matter so fundamental should be the subject of a rule making prior to any action on the instant merger petition.

¹² *AT&T-Dobson Order*, 22 FCC Rcd 20295 at 20309 ¶ 23 (2007).

¹³ *Joint Opposition* at p. 14, Note 40.

The Joint Opponents argue that the rural carriers expressing concerns about the proposed merger are motivated by a desire to “impede competition and block improved services to rural areas.” Joint Opposition at p. iv. However, if that were the motivation, then the Rural Carriers would have sought to block the merger. Instead, the Rural Carriers filed a “Petition to Condition Transaction Approval”. Far from trying to prevent competition and improved rural services, the Rural Carriers are trying to ensure that the carriers that have agreed to take on the burden of serving those rural areas that large carriers find to be unprofitable will be able to do so. As discussed in the Petition, if Verizon Wireless and ALLTEL are allowed to unconditionally create a mega-carrier that will be able to control the availability of roaming in rural areas, the small, rural carriers will be unable to fulfill that important objective.

II. The FCC Should Utilize the 95 MHz Screen and HHI-Based Screening Tests on a CMA-by-CMA Basis for All Markets Where There is Overlap of Verizon Wireless and ALLTEL Holdings

In addressing proposed mergers and acquisitions in the wireless industry, the FCC measures competitive effects on a CMA basis. Pursuant to this analysis, the FCC utilizes screens to focus on those acquisitions where a potential for anticompetitive harm exists. A suspect acquisition is one where, in any particular CMA, there is either (1) a post-acquisition HHI of 2800 with an increase of 100, or (2) an increase of 250 regardless of the HHI, or (3) the acquiring party will hold a 10 percent or greater interest in 95 MHz of cellular, PCS, SMR and 700 MHz spectrum.¹⁴ Market share information on a CMA basis is not publicly available, and so it is not possible for a party other than the Department of Justice or the FCC to compute HHI in

¹⁴ The Commission set forth its mode of analysis in the *AT&T-Dobson Order*, 22 FCC Rcd 20295 (2007) at ¶ 40. *See also* Twelfth Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, WT Docket No. 07-71, 44 CR 1, 23 FCC Rcd 2241 (January 28, 2008) (“*Twelfth Competition Report*”).

any CMA. Given the extraordinarily high HHI on a national basis, and the small number of competitors in most CMAs, the likelihood is that in many CMAs the HHI and the size of the increase will exceed the level that suggests a likelihood of injury to competition. The Commission should perform the market share analysis for every CMA market where there is an overlap of Verizon Wireless and ALLTEL holdings, and impose divestiture conditions for all markets where the potential for anticompetitive harm exists.

In seeking to underplay the significance of their combined spectrum holdings, the Joint Opponents argue that the 95 MHz initial screen “is not [...] a spectrum cap or a presumption that aggregation beyond a certain level is anti-competitive, but rather only the beginning of [the FCC’s] competitive analysis.”¹⁵ While this may be the case, the Commission does not end its inquiry with just an analysis of the combined entity’s spectrum holdings, but must evaluate factors such as the HHI in all overlap markets, and consider the respective market shares of Verizon Wireless and ALLTEL when evaluating the potential anticompetitive effects of the proposed merger. Even if the market is defined as nationwide, which is what Verizon and ALLTEL seek, the post-acquisition HHI is highly likely to exceed 2800 with an increase in excess of 100. Nationwide HHI, according to the FCC, was 2674 at the end of 2006. *Twelfth Competition Report* at 6. According to the FCC figures for year end 2006, the Verizon acquisition of ALLTEL (assuming no divestitures) will increase the HHI by about 260.¹⁶ Given the size of ALLTEL and its position in the marketplace, and the fact that the wireless marketplace has only further consolidated since the end of 2006, the nationwide increase in HHI is likely to exceed 250, consistent with the Commission’s analysis in the *Twelfth Competition*

¹⁵ *Joint Opposition* at pp. 19-20.

¹⁶ The Commission and Department of Justice will have access to more recent market share information.

Report, supra. Thus, under these first two prongs in the FCC's analysis, the acquisition is likely to inflict competitive injury nationally, as well as in many of the 163 CMAs where the post-merger entity will control or hold an attributable interest in both cellular licenses.

The competitive impact discussion in the Joint Opposition and the related Attachments only seems to raise more issues than it answers:

1. The Joint Opponents argue that this situation should be analyzed as a national market. But they never address competitive effects on a national market, either here or in their original submission. They do not even address the normal analytical factors, such as the HHI or the HHI increase. The reason for this omission is obvious. On a national basis, the HHI was notably high in 2006. The nationwide HHI is now likely to be considerably higher, and the acquisition of ALLTEL (the 5th largest nationwide competitor) by Verizon (currently #2, moving up to #1 after this acquisition) will likely push the HHI into stratospheric levels. The increase in concentration can be expected to exceed the level where competitive injury is presumed, if Verizon were to acquire all of ALLTEL. According to the Twelfth Competition Report, the HHI increase (as of the end of 2006) would exceed 250. Given the increased size of Verizon since then, the increase is likely now to be even greater. Unfortunately, there is no reasonable way for third parties to measure the HHI increase if the proposed divestiture of 85 markets is allowed to move forward. That is a computation that can only be made by the Commission or Department of Justice.
2. The Joint Opponents argue against an analysis based on local market impact, but they do not address the factors customarily considered in defining a market. If prices in a

geographic area were to increase, where could customers go to find an alternative source? *See, e.g.*, the 1992 Horizontal Merger Guidelines at §1, which states that a market should be defined by hypothesizing consumer reactions to a small but significant and non-transitory price increase. Suppliers practicably available to consumers should be included in the market. That analysis requires a more local market. If a competitor does not offer services in a particular CMA, a customer in that CMA cannot avoid a price increase by going to that competitor. That is why CMAs are the best geographic markets within which to measure the acquisition.¹⁷

3. The Joint Opponents acknowledge that there are three prongs to the FCC's CMA analysis, but they ignore the first two. The first is HHI within the CMA, and the second is HHI increase in the CMA. They do not address this fact, but it is significant. Given the high HHI on a national basis and the limited number of competitors in most CMAs, it is a fair presumption that the HHI and the HHI increase will both exceed the level at which injury to competition in a CMA is likely. If we assume, for example, a pre-acquisition CMA with five equally sized competitors, the acquisition would lead to a post-acquisition HHI of 2800, and an increase of 800. If we assume a pre-acquisition CMA with six equally sized competitors, the post-acquisition HHI will exceed 2000 with an increase of more than 500. If, as would be more realistic, the competitors are not of equal size, the post-acquisition HHI and its increase will be even larger.
4. The chart on page 34 of the Attachment 1 reply declaration is revealing because it shows that competition for CDMA roaming will be greatly reduced. The Joint Opponents' own

¹⁷ There can be also a national market. As shown above, that does not help Verizon, because the proposed acquisition will have a seriously adverse impact on the national level.

expert report indicates that in 20 counties where Verizon will not divest the ALLTEL assets, there are now only two CDMA competitors, and after the acquisition there will be only a single CDMA provider to provide roaming services. That is, the merger would appear to give Verizon/ALLTEL a CDMA monopoly. And in 310 counties where there will be no divestiture, there will be only two remaining competitors: VZW/ALLTEL and one other. That fact certainly indicates a significant increase in market concentration and potential for competitive harm. There are another 317 non-divestiture counties where post-acquisition there will be two or more carriers competing with VZW/ALLTEL. With so few competitors available to offer roaming services for CDMA providers, the cost of roaming will inevitably increase.

Where the Commission's competitive analysis indicates that a divestiture of spectrum is in the public interest, the Commission should require Verizon Wireless to divest its excess holdings in a manner that will ensure rural carriers have a realistic opportunity to acquire the divested operations.

The Joint Opponents argue that “[n]o basis exists to restrict the eligibility of potential acquirers of divested properties and the Commission should [...] allow market forces to determine an appropriate solution.”¹⁸ The Rural Carriers respectfully submit that they never called for restricting the pool of bidders in any way, but rather for the FCC to merely provide a “realistic opportunity” for rural carriers to acquire the divested properties. In this regard, the Commission should require any sale of properties to be conducted pursuant to procedures that allow for individual carriers and/or carrier groups to participate in the bidding, for the divested

¹⁸ *Joint Opposition* at p. 41

properties to be made available on a CMA-by-CMA or at most state-by-state basis, and for no special preference to be afforded to single nationwide bidders. Additional conditions can and should be imposed on the divestiture when this is necessary to prevent a lessening of competition and to further the Congressional intent of encouraging rural telephone company participation in the provision of advanced wireless services.¹⁹ In this way, rural carriers will not have “gamed” the divestiture process “in a manner that would presumably allow them to acquire these divested assets...”²⁰ They will still have to compete against much larger carriers in bidding on the divested spectrum.

In this regard, it is important to keep in view the important public policies that must also be taken into consideration when evaluating the impact of the proposed merger, as required by Congress. In particular, it must be kept in mind that hundreds of rural telecommunications carriers came into existence because they were formed to serve those areas that the largest carriers did not deem profitable enough to serve. Many of these rural carriers are cooperatives, and the vast majority of them are small businesses. Congress has established a number of mechanisms and policies designed to facilitate the provision of service to rural subscribers that may not otherwise be served but for the efforts of entities such as rural telecommunications carriers. Thus, the Universal Service Fund was created to help defray the cost of serving citizens in situations that would not be “profitable” from a traditional business standpoint. The Small Business Act and the Regulatory Flexibility Act require the Commission to take into consideration the impact of its actions on small businesses.²¹ And Section 309(j) of the

¹⁹ See, 47 U.S.C. §309(j).

²⁰ *Joint Opposition* at p. 41.

²¹ Congress and the Commission have long recognized that small businesses make up an important element of the U.S. economy. Congress therefore acted to protect small businesses, because of their contributions to Universal

Communications Act of 1934, as amended, requires the Commission to facilitate the participation of small businesses and rural telephone companies in the provision of rural wireless services. It is respectfully submitted that the public interest policies reflected in these Congressional mandates must be taken into consideration in evaluating the competitive impact of a transaction as enormous as the instant merger. Within the past few years, we have seen the seven RBOCs consolidate to a few; Dobson Cellular, RCC, and other regional carriers have been swallowed up; Sprint is seeking to merge with Clearwire; and now Verizon Wireless proposes to merge with ALLTEL. This unprecedented consolidation is quickly driving the mobile wireless market toward an oligopoly structure. Under such conditions, it will continue to fall on the small, rural carriers to serve those communities that are not along the interstate highway, and therefore outside the plans of the larger carriers. However, if rural carriers must compete against a cellular monopoly, and cannot offer their customers the ability to utilize their wireless devices at a fair rate when travelling outside of their rural service areas, these small carriers will be forced out of the wireless business. Thus, while VZW/ALLTEL argues that the petitioners would "uniquely burden Verizon Wireless with obligations borne by no other competition carrier",²² there must be certain obligations borne by the largest of the carriers to ensure that they do not eliminate small businesses as a competitive force.

Service and their role in the economy. See Small Business Act, 15 U.S.C. § 631 *et seq.* ("Congress hereby declares that it is the continuing policy and responsibility of the Federal Government to use all practical means and to take such actions as are necessary, consistent with its needs and obligations and other essential considerations of national policy, to implement and coordinate all Federal department, agency, and instrumentality policies, programs, and activities in order to: foster the economic interests of small businesses; insure a competitive economic climate conducive to the development, growth and expansion of small businesses; establish incentives to assure that adequate capital and other resources at competitive prices are available to small businesses; reduce the concentration of economic resources and expand competition; and provide an opportunity for entrepreneurship, inventiveness, and the creation and growth of small businesses."). Congress also passed the Regulatory Flexibility Act, Pub. L. No. 96-354, 194 Stat. 1164 (1980), to prevent the creation of unnecessary burdens on small businesses. R.F.A §2(a)(5), 5 U.S.C. § 603.

²² Joint Opposition at p. 44.

Certain other arguments raised by VZW/ALLTEL must be addressed. First, the Joint Opponents argue that the cellular cross ownership rule has been “abolished”, and that there is “no argument that cellular cross ownership is banned or unlawful.”²³ However, in the case of rural markets, the Commission replaced the original bright line cross ownership rule with a case-by-case approach.²⁴ Thus, in certain cases, it is entirely possible that cellular cross-ownership may still be found unlawful because of its impact on competition. And in this case, VZW/ALLTEL will be a dominant carrier that will yield extraordinary market power in a marketplace that is becoming more and more consolidated.

Second, VZW/ALLTEL argues that Commission precedent is clear that considering conditions that may also be the subject of a rule making proposal is not appropriate in the context of a merger proceeding. Joint Opposition at pp. 42-43. However, the Rural Carriers provided ample precedent for the Commission’s broad authority to impose conditions on mergers, and the Commission imposed a freeze on USF as a condition of the ALLTEL/Atlantis merger, despite the pendency of a rulemaking proceeding on future restrictions on USF.²⁵

Finally, the Rural Carriers note that the Joint Opponents have cited approvingly to a statement by Dr. Gregory Rosston that the DOJ/FTC Horizontal Merger Guidelines define a relevant product market as the “smallest set of products and geographic area such that control by a single entity could hypothetically be profitably monopolized.”²⁶ If this is the case, doesn’t this

²³ Joint Opposition at pp. 38-39.

²⁴ Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, *Report and Order and Further Notice of Proposed Rule Making*, 19 FCC Rcd 19078, 19114 (2004) (*Rural Report and Order*).

²⁵ See Applications of ALLTEL Corporation and Atlantis Holdings, LLC; *Memorandum Opinion and Order*, WT Docket No. 07-185 (October 26, 2007) (“*ALLTEL Merger Order*”).

²⁶ *Joint Opposition* at p. 48 (*citing* Sprint Nextel Comments, WT Docket 05-265, Attachment, Gregory L. Rosston, “An Economic Analysis of How Competition Has Reduced High Roaming Charges,” at 11-12 (*filed* Nov.

suggest that CMAs are the appropriate market for analysis of the proposed Verizon Wireless – ALLTEL merger because they are the smallest geographic area that control by a single entity could hypothetically be profitably monopolized?

III. Divestiture Conditions Must Be Imposed in Further CMA Markets to Address the Anticompetitive Impact of the Proposed Merger

In their Petition, the Rural Carriers requested that the Commission impose further divestiture obligations on the merged VZW/ALLTEL in certain Georgia, Alabama and Idaho CMA markets where Verizon Wireless would ultimately hold both cellular licenses, as well as other mobile wireless spectrum.²⁷ The markets in question, which include CMA153 (Columbus, GA MSA), CMA 261 (Albany, GA MSA), CMA 311 (Alabama 5 - Cleburne RSA), CMA 314 (Alabama 8 – Lee RSA), CMA 375 (Georgia 5 – Haralson RSA), CMA 376 (Georgia 6 – Spalding RSA), CMA 392 (Idaho 5 – Butte RSA) and CMA 393 (Idaho 6 – Clark RSA), were not included among the list of markets that Verizon Wireless proffered for divestiture.

The Joint Opponents urge the Commission to forego a market-by-market review of the proposed merger based on the reduced number of CMA markets that are implicated under their “adjusted” screen.²⁸ The Commission must not be swayed by this misdirected argument and, given the implications of this mega-merger for rural carriers and their customers, it should closely examine the competitive marketplace by performing an HHI analysis in every CMA where the 95 MHz screen would be reached or exceeded. While the Rural Carriers do not have access to the necessary market share data to perform an HHI analysis on their own, the merger is

28, 2005).

²⁷ *Rural Carriers Petition* at p. 10.

²⁸ See p. 32 of Joint Opposition.

likely to show significant concentration in most (if not all) of the CMA markets mentioned in the Rural Carriers' Petition (2,800 HHI and change in HHI of 100 or greater and/or the change in the HHI would be 250 or greater regardless of the level of HHI).

Attachment 2 to the Joint Opposition provides an "analysis" of certain of the markets for which the Rural Carriers have requested divestiture. In particular, Attachment 2 discusses CMA 153, CMA 314, and CMA 376. The other CMAs set forth in Rural Carriers' Petition are not addressed in Attachment 2. VZW/ALLTEL claims that the results of the Attachment 2 analysis "demonstrate that, in every one of these counties, it will face substantial competition." However, Attachment 2 does not contain an analysis of the HHI impact or market share analysis. Instead, the analysis is merely a recital of the other carriers in the market. Even under the Joint Opponents' skewed and self-serving analysis, VZW/ALLTEL concedes that the need for additional review is triggered for three counties in CMA153. Joint Opposition at p. 32. And in the case of CMAs 314 and 376, it appears that the analysis contains errors. In particular:

For CMA 314, Attachment 2 states that "the Commission's own data shows that at least four carriers are operational throughout most of the area, which correlates with applicants' data showing five operational carriers including Verizon Wireless and ALLTEL." But when Verizon Wireless and ALLTEL are subtracted, this leaves only *three* operational carriers to compete with the merged entity. Similarly, for CMA 376, Attachment 2 states that "the Commission's own data shows that at least four carriers are operational throughout most of the area, which correlates with applicants' data showing four operational carriers including Verizon Wireless and ALLTEL." When Verizon Wireless and ALLTEL are subtracted, this leaves only *two* operational carriers to compete with the merged entity.

Two or three competitors is hardly robust competition, especially since the second competitor in CMA 376 is SouthernLinc, which provides 800 MHz ESMR service rather than cellular or PCS. Given the fact that the merged entity will *far* exceed the 95 MHz guidepost in each of these markets, and the high market concentration factors discussed above, an HHI analysis for all of the markets listed in the Rural Carriers' petition is vital.

It is possible to measure Verizon's and Alltel's spectrum in specific CMAs, as shown in Attachment 2 to the Joint Opposition. For example, in CMA 153, the Verizon/Alltel combination will hold 124 MHz in each of the three constituent counties (one in Alabama and two in Georgia). In CMA 314, covering 5 counties in adjacent Alabama, the combination will hold 127 MHz in one county, and varying amounts in the other four. In CMA 376 (10 Georgia counties) the overlap is 124 in Talbot County. In the six Georgia CMAs where Verizon offers to make divestitures, the overlap is typically less. In CMA 377 (6 Georgia counties) there is no overlap in two of the counties, and an overlap of 82 in the other four. In CMA 378 (10 Georgia counties), the overlap is 72 MHz in 9 of the counties and 82 in the tenth. In CMA 379 (12 Georgia counties), the overlap is 82 in 6 counties and 92 in the other 6. In CMA 380 (12 Georgia counties), the overlap is 102 in one county, 82 in 9 and 72 in two. In CMA 382 (6 Georgia counties), the overlap ranges from 72 to 112. In CMA 383 (9 Georgia counties), the overlap is 102 MHz in two counties and 82 in the other 7. Combined spectrum is therefore likely to indicate a competitive problem in the CMAs to be divested and even more so in the three CMAs Verizon has proposed to retain.

Thus, on a nationwide basis, the market is highly concentrated, and this acquisition will increase concentration significantly. While the market shares of the various competitors is not

publicly available on a CMA basis, it is a fair inference that in the CMAs in and adjacent to Georgia, shares are high and the markets are concentrated.

IV. The FCC Should Require Automatic Roaming on Reasonable Terms for All Services Offered by VZW/ALLTEL Post-Merger

In recognition of the tremendous market power that will be wielded by Verizon Wireless if its proposed merger with ALLTEL is approved, the Rural Carriers and other commenters have urged the Commission to impose conditions on the merger that would require the merged entity to offer reasonable roaming rates and terms to competing wireless carriers, and to require that the merged entity offer roaming for 3G data and other services on reasonable terms, in foreign markets as well as on a “home roaming” basis.²⁹ In response, VZW/ALLTEL claims that “conditioning the merger upon imposition of any kind of special conditions in these areas would create an unlawful regulatory disparity among competitors in the market,”³⁰ that CDMA and GSM roaming opportunities will continue to exist in the vast majority of markets following the merger,³¹ and that it has already made voluntary commitments with respect to roaming that address any remaining concerns, including a new commitment to keep the rates set forth in ALLTEL’s existing agreements with each regional, small and/or rural carrier for the later of the full term of the agreement or for two years from the closing date.³²

The Rural Carriers agree in theory that competition is a better means than regulation of assuring that roaming charges remain competitive. The problem is that as the largest competitors

²⁹ See, e.g., Rural Carriers Petition at pp. 11-15; Metro PCS Communications, Inc. and NTELOS, Inc. Petition to Deny, dated August 11, 2008 (“Metro PCS Petition”) at pp. 15-38; Rural Telecommunications Group Petition to Deny, dated August 11, 2008 (“RTG Petition”) at pp. 21-22.

³⁰ *Joint Opposition* at p. 45

³¹ *Id.* at p. 46.

³² *Id.*

gobble up the mid-sized suppliers, the number of potential suppliers of roaming services decreases and competition can no longer be relied upon to keep prices down. The fewer alternatives there are, the less likely it is that competition will keep roaming charges reasonable. Verizon admits that in 20 CMAs, this acquisition will reduce the number of CDMA suppliers from 2 to 1. In those 20 markets, Verizon will have monopoly power to raise fees for CDMA roaming services to prohibitive levels. In other CMAs there will remain only 2 or 3 CDMA alternatives. At that low level of competition, the competitors will lack incentive to offer low fees for roaming, and fees will naturally and inevitably increase.

The Rural Carriers respectfully submit that imposing appropriate conditions on Verizon in the post-merger market will be necessary in light of the merged carrier's spectrum holdings and overwhelming market power (even when measured in terms of nationwide HHI), the fact that CDMA and GSM roaming opportunities may be limited to just one or two sources (resulting in no real choice for many small/rural carriers), and Verizon's commitments to abide by its existing agreements (or even to extend such arrangements for a limited term) are ineffective measures for carriers who are in the process of building rural networks, and who do not have existing roaming agreements with ALLTEL or Verizon Wireless.³³ Moreover, the presence of ALLTEL in the market affects more than just Verizon's roaming prices. This is an important point. AT&T, Sprint and T-Mobile all provide roaming services, and all of them must take into account the price charged by ALLTEL. If it disappears, they can raise their prices, as can Verizon in two years.

³³ Contrary to the arguments of Joint Opponents at p. 57, the roaming proposals by various petitioners do not constitute rate regulation. The *Rural Carriers* for their part have merely proposed that the Commission establishes guidelines for what is a reasonable roaming rate, not unlike the "safe harbor" approach used by the Commission in determining if a wireless build out constitutes "substantial service."

VZW/ALLTEL also argues that such protective roaming measures are better considered in the context of the Automatic Roaming rule making, where they have already been proposed.³⁴ The Rural Carriers have demonstrated in their petition that the Commission has authority to fashion appropriate conditions particular to a proposed transaction, especially where necessary to prevent competitive harm. See Petition at pp. 7-8. If VZW/ALLTEL believes that the consequences of a merger on roaming must be resolved in the rule making context, then the Commission should postpone any action on the instant application until after these important issues have been resolved in the pending rule making.³⁵ The proposed merger is one of the largest transactions that will ever take place in the mobile wireless industry. Addressing the roaming issues raised in the record of this proceeding only after approval of the transaction has been granted is like closing the barn door after the cow is out. Verizon Wireless and ALLTEL have both had ample notice of the pending rule making, and the fact that this issue may be addressed before their proposed transaction was acted upon.³⁶

The Joint Opponents argue at page 47 that roaming is not a valid product market, essentially because consumers do not “buy” roaming. This argument is akin to saying that steel is not a market because consumers do not buy steel. While they do not buy steel directly, they buy cars and other goods that are composed in part of steel. Similarly, consumers buy wireless phone service that includes roaming. That is a significant input into the product consumers buy,

³⁴ *Joint Opposition* at p. 60; see WT Docket No. 05-265

³⁵ See Reply Comment of T-Mobile at pp. 8-9.

³⁶ While VZW/ALLTEL wants to relegate the roaming issues raised in this proceeding to the status of “side” issues to be resolved in a rule making process that is divorced from the merger proceeding, this approach would be ineffective. A good example of this dynamic is the Virtual NXX issue that has been on hold at the Commission for over five years. Similarly, Verizon argues that any aggrieved carrier can take their roaming through the Commission’s Section 208 complaint process. However, the complaint process can take months or years and, in the mean time, a small, rural carrier can be put out of business. Because the impact on roaming is a direct result of the proposed merger, the merger approval process is the appropriate forum in which to address this issue.

and if it is expensive or unavailable, that affects the desirability of the product as a whole. If competitors cannot obtain roaming services at competitive pricing, consumer prices will inevitably increase.

The Joint Opponents say that roaming will not be affected because there are other competitors offering roaming service. They further argue that, if Verizon demands too high a price for roaming, smaller carriers can switch to an alternative source. However, as discussed above, there will be fewer competitors offering roaming service, and as the number of competitors declines, the incentive to offer competitive prices declines as well. From the small carrier perspective, if a carrier chooses the CDMA format, it is forced to negotiate with Verizon for a roaming agreement. If the small carrier is unable to secure that agreement on reasonable terms, it will quickly go out of business due to an inability to attract and maintain customers.

For this same reason, the Commission must reject VZW/ALLTEL's argument (at pp. 11, 53) that roaming choices will increase because CDMA and GSM carriers are eventually converging through the implementation of LTE as their 4G play. By the time LTE is implemented in rural areas on a widespread basis, thereby creating additional roaming opportunities, rural carriers will likely be out of business.

VZW/ALLTEL argues (at pp. 62-63 of the Joint Opposition) that it should not be required to provide roaming for 3G data service, because this feature is an "information service" only. However, the Commission can take official notice that data/internet access is widely offered as a service that is bundled with voice, which is clearly a telecommunications service. Therefore, the public interest requires that both services be the subject of a roaming requirement.

Moreover, the Commission has proposed the extension of a roaming requirement to 3G data,³⁷ and this proposal has been strongly supported by small and rural carriers. In this case, because of the tremendous size and scope of the Verizon Wireless – ALLTEL merger, and its impact upon rural/regional carriers and their customers, it is appropriate for the Commission to impose data roaming obligations in the context of this merger.

V. The FCC Should Protect Consumers from Anticompetitive Practices Involving Wireless Handsets

As the demand for wireless services grows, the ability to offer exclusive access to the latest wireless devices confers a significant competitive advantage on the nation’s largest carriers. Verizon Wireless enjoys significant competitive benefits from its ability to negotiate exclusive handset distribution arrangements, and smaller/rural carriers find themselves, as a result, with little or no access to the most sought-after wireless devices. Accordingly, the Rural Carriers and numerous other petitioners have urged the Commission to take steps to prevent the post-merger VZW/ALLTEL from exacerbating this already-difficult handset availability situation. For their part, the Joint Opponents argue that exclusive handset arrangements are actually pro-consumer,³⁸ that imposition of exclusivity restrictions on Verizon Wireless would not achieve the desired result,³⁹ and that an inventory of “generic” mobile handsets is not feasible without a radical shift in the wireless market.⁴⁰

³⁷ See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, *Further Notice of Proposed Rule Making*, 42 CR 508, 22 FCC Rcd 15817, 15846 (2007).

³⁸ *Joint Opposition* at p. 73.

³⁹ *Id.* at pp. 73-74.

⁴⁰ *Id.* at p. 74.

As the Commission itself has recognized, there is a disparity in the ability of Tier II and Tier III carriers to gain access to the latest wireless devices and this delay can impact carriers' ability to achieve timely compliance with important regulatory mandates, such as hearing aid compatibility.⁴¹ Verizon's ability to control handset availability is acknowledged by Verizon's argument that a benefit of the proposed merger will be to give ALLTEL's customer's access to a greater variety of wireless devices.⁴² The proposed merger will only magnify the competitive disparity between Verizon and its smaller competitors. The Rural Carriers submit that conditioning exclusive handset arrangements as suggested in their Petition would create a much larger, robust market for handset manufacturers to sell their latest handsets (spurring economies of scale and reducing the per-unit cost for research and development); and that this merger condition sought by the Rural Carriers and numerous others would not require a radical shift in the wireless market, other than Verizon giving up its dominance of the wireless handset market. To alleviate Verizon's concerns about disparate treatment, the Commission may extend this reasonable and pro-competitive prohibition to other wireless carriers by taking prompt and favorable action on the Rural Cellular Association's recent *Petition for Rulemaking* addressing this issue.⁴³

VI. Verizon Should Be Required to Provide Cost Support For All USF Support Currently Received by ALLTEL

In its petition, the Rural Carriers' Petition urged the Commission to impose conditions on the post-merger VZW/ALLTEL that would require the merged entity to provide cost justification

⁴¹ Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, WT Docket No. 07-250, *First Report and Order*, 44 CR 565, 23 FCC Rcd 3406 (2008) at para. 41.

⁴² *Joint Opposition*, at p. 7.

⁴³ Petition for Rulemaking Regarding Exclusivity Arrangements between Commercial Wireless Carriers and Handset Manufacturers, filed May 20, 2008 ("*RCA Handset Petition*").

for ALLTEL’s continued, massive high cost USF draw. This proposed condition is warranted, given ALLTEL’s status as the largest high cost fund recipient,⁴⁴ together with the \$10 Billion in transaction-related savings, which Verizon Wireless touts as a result of the transaction.⁴⁵

Verizon Wireless and ALLTEL, perhaps predictably, do not want to file any cost support to justify ALLTEL’s USF draw. It is respectfully submitted that their arguments on this issue rely upon incomplete facts, and otherwise lack merit.

As a threshold matter, it should be noted that the Joint Opposition appears to erroneously attribute to the Rural Carriers the argument that Verizon Wireless must forego ALLTEL’s high cost funding as a result of the transaction.⁴⁶ The Rural Carriers’ Petition, however, makes no such claim.⁴⁷ It merely seeks the imposition of the condition to the transaction which requires a cost showing in order to receive high cost funding, post-transaction.⁴⁸

Indeed, Verizon Wireless avoids addressing the issue of how the proposed merger will affect ALLTEL’s universal service fund costs. Instead of discussing this reality – plainly implicated by the “\$10 Billion” in savings it claims – it suggests that the Petitioners want “an

⁴⁴ The Joint Opponents do not challenge the assertion that ALLTEL has the largest high-cost draw in the fund. Rather, they argue only that its draw does not represent the majority of the high cost fund. *See Joint Opposition* at p. 79.

⁴⁵ *Rural Carriers Petition* at pp. 16-19.

⁴⁶ *See Joint Opposition* at pp. 75 (Note 243), 78.

⁴⁷ Likewise, it should be noted that the Joint Opponents argue that a merger proceeding is not the appropriate venue to conduct ETC redesignation, citing to *AT&T/Dobson* (where petitioners wanted the post-merger entity to lose its ETC designation). Again, the case is factually distinguishable because, as Petitioner points out, Petitioner is not seeking to have Verizon stripped of its ETC designation.

⁴⁸ *Rural Carriers Petition* at p. 19.

entirely new ETC designation process and reimbursement system applicable only to Verizon Wireless.”⁴⁹

But, of course, the proposed condition is no more a call for “an entirely new” ETC designation process than was the Commission’s decision to cap ALLTEL’s USF draw in the first instance.⁵⁰ There the Commission recognized that ALLTEL’s massive USF draw merited a cap, a mechanism that was then under consideration as a policy reform for competitive ETCs – and which was later adopted, on an interim basis, for the competitive ETC industry at large.⁵¹

Now, the Petitioners submit that a USF-related cost showing is appropriate. Verizon Wireless’ transaction-related savings (of \$10 Billion) are certainly sizeable and unique enough to warrant a cost showing. Indeed, as was the cap condition in the ALLTEL/Atlantis merger proceeding, the subject of requiring a cost showing for competitive ETCs is currently before the Commission in the ongoing USF reform docket.⁵²

Finally, the Commission should reject the claim that the proposed cost sharing requirement would violate the principle of “competitive neutrality.”⁵³ This argument is based upon the mistaken premise that ALLTEL’s high-cost funding will be eliminated because of Verizon Wireless’ size. But, as earlier discussed, this argument ignores the rest of the condition

⁴⁹ *Joint Opposition* at p. 80.

⁵⁰ *See Applications of ALLTEL Corporation and Atlantis Holdings, LLC; Memorandum Opinion and Order*, WT Docket No. 07-185 (October 26, 2007) (“*ALLTEL Merger Order*”).

⁵¹ *See High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Order*, WC Docket No. 05-338, CC Docket No. 96-45, FCC 08-122 (*rel.* May 1, 2008) (“*Interim Cap Order*”).

⁵² *See High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rule Making*, WC Docket No. 05-338, CC Docket No. 96-45, (*rel.* January 29, 2008) at ¶¶ 5, 19 (tentatively concluding that competitive ETCs should be compensated for high-cost support based on their own costs).

⁵³ *Joint Opposition* at p. 78.

proposed by the Rural Carriers, *i.e.*, that the newly-merged entity provide a cost showing in order to maintain its high-cost funding. And, while the other wireless carriers such as AT&T and Sprint may not be required to demonstrate their costs in such a fashion (that is, until the referenced *NPRM* results in an order), none of those carriers evidence the massive USF draw which ALLTEL enjoys, together with the historic, multi-billion dollar savings promised by Verizon Wireless.

The Commission's policies reflect an historic concern that potential universal service payments not unduly influence a carrier's purchasing decision, *vis-à-vis* another carrier.⁵⁴ Verizon collects little, if any, high-cost funds, while its transferor, ALLTEL, collects the largest single share. Is it not likely that this sum plays a role in the transaction, especially given Verizon Wireless' current reticence on this subject? Petitioner urges the Commission not to lose sight of this important point. Just as the Commission sought to protect the high-cost fund in the ALLTEL/Atlantis transaction, so should it now further strengthen it by adopting the proposed condition requiring a cost showing on the subject of any future, high-cost draws by ALLTEL.⁵⁵

⁵⁴ See In the Matter of Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, *Fourteenth Report and Order*, 16 FCC Rcd 11244 (May 23, 2001), ¶91.

⁵⁵ The Joint Opponents argue that there is "no basis for the Commission to act on requests related to USF..." *Joint Opposition* at pp. v, 75-81. However, at no time in the past has a merger been more likely to have a significant effect on USF. When better should there be requests related to USF, and when better for the Commission to act on them?

WHEREFORE, the Rural Carriers request that their petition be granted; and that the Verizon – Atlantis transfer of licenses applications be conditioned in the manner described therein.

Respectfully submitted,

THE RURAL CARRIERS

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Filed: August 26, 2008

Attachment A

The Rural Carriers

- Choctaw Telephone Company
- Custer Telephone Cooperative, Inc.
- Dubois Telephone Exchange, Inc.
- Electra Telephone Company
- Emery Telcom
- Manti Telephone Company
- MoKan Dial, Inc.
- New Ulm Telecom, Inc.
- Northeast Florida Telephone Company, Inc.
- Project Mutual Telephone Cooperative Association, Inc.
- Public Service Communications, Inc. (including its subsidiaries Public Service Telephone Company and Public Service Wireless, Inc.)
- Range Telephone Cooperative, Inc.
- South Central Utah Telephone Association, Inc. d/b/a South Central Communications
- Uintah Basin Electronic Telecommunications d/b/a UBET Wireless
- Yadkin Valley Telephone Membership Corporation

DECLARATION UNDER PENALTY OF PERJURY

I, E. Kelly Bond, hereby state the following:

1. I am the President of Public Service Communications in Reynolds, Georgia.
2. I have read the foregoing "Reply to Joint Opposition." 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.



E. Kelly Bond

DECLARATION UNDER PENALTY OF PERJURY

I, W.C. Ebberts, hereby state the following:

1. I am an officer of Custer Telephone Cooperative, Inc. in Challis, Idaho.

2. I have read the foregoing "Reply to Joint Opposition." With the exception of those facts of which official notice can be taken, and those facts specific to the State of Georgia, 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.

Signed:



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 Joint Opposition**" to the following:

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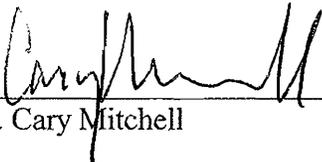
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