

**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	)	File Nos. 0003463892, <i>et al.</i>
Commission Licenses and Authorizations	)	
Pursuant to Sections 214 and 310(d) of the	)	
Communications Act	)	
	)	

**REPLY TO JOINT OPPOSITION TO PETITIONS TO DENY**

**OF**

**PALMETTO MOBILENET, L.P.**

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## SUMMARY

The Opposition filed by Verizon and Alltel focuses largely on the amount of spectrum held by various carriers in markets in which the companies are attempting to merge, but does not substantively dispute the competitive harm that will result from such a merger. Verizon and Alltel have not even attempted to refute the evidence proffered by Palmetto MobileNet in its Petition to Deny demonstrating that all South Carolina markets meet the FCC's "initial screen" and are therefore subject to additional scrutiny. The Petitioners have undertaken a market-by-market analysis of each South Carolina CMA, taking into account not only the amount of spectrum available to competitors in these markets, but also other key competitive factors, including, the total number of rival service providers, the number of rival firms that can offer competitive nationwide service plans, the coverage of competitors respective networks, and the rival firms' market shares. Taken in sum, a merged Verizon-Alltel entity will substantially harm competition in every South Carolina CMA. Accordingly, should the FCC grant this transaction, it should force the merged entity to divest each South Carolina CMA.

Additionally, as the Petitioners demonstrated in their Petition to Deny, the arguable public interest benefits of the proposed merger cited by Verizon and Alltel do not outweigh the competitive harms that will result from approval of the merger. Verizon and Alltel do not provide any additional information in their Opposition to dispute that fact.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In re Applications of )  
)  
Atlantis Holdings LLC, Transferor )  
) WT Docket No. 08-95  
and )  
)  
Cellco Partnership d/b/a ) File Nos. 0003463892, *et al.*  
Verizon Wireless, Transferee )  
)  
for Consent to the Transfer of Control of FCC )  
Licenses and Authorizations Pursuant to Sections )  
214 and 310(d) of the Communications Act )

To: Wireless Telecommunications Bureau

**REPLY TO JOINT OPPOSITION  
TO PETITIONS TO DENY AND COMMENTS**

Palmetto MobileNet, L.P. (“PMN”), by its attorneys and pursuant to Section 1.939 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby replies to the Joint Opposition to Petitions to Deny and Comments (“Opposition”) filed by Cellco Partnership d/b/a Verizon Wireless (“Verizon”), Atlantic Holdings, LLC and ALLTEL Corporation (“Alltel”) in the above captioned proceeding.

In their Opposition, Verizon and Alltel use a large amount of paper to say very little of consequence in connection with the petition to deny the proposed merger (“Petition”) filed by PMN. The Opposition focuses largely on the amount of spectrum held by various carriers in the merger markets rather than on the larger competitive landscape. As discussed in PMN’s Petition, the proposed merger will result in competitive harm to consumers in the merger markets beyond the mere concentration of

spectrum in the hands of the merged Verizon entity, and will on balance harm the public interest. PMN limits its discussion in this Reply to the need for a merged Verizon to divest certain spectrum holdings in South Carolina.

**I. The FCC Must Apply Heightened Scrutiny to the Proposed Transfer of Wireless Licenses to Verizon in Each South Carolina Market**

As PMN explained in its Petition, in its analysis of the competitive impact of a proposed merger, the FCC utilizes a screening procedure to determine which markets require additional scrutiny by the Commission. Pursuant to the FCC's merger screen, any of the following post-merger markets will be subject to heightened scrutiny: (1) markets in which the Herfindahl-Hirschman Index ("HHI") would be greater than 2,800 and the change in HHI would be 100 or greater; (2) any market in which the change in HHI would be 250 or greater, regardless of the level of the HHI; and (3) markets in which the applicants would have a 10 percent or greater ownership interest in 95 MHz or more of cellular, PCS, SMR and 700 MHz spectrum in at least part of the market. While Verizon and Alltel spend a sizeable portion of their 256-page Opposition addressing the 95 MHz spectrum screen, they conveniently ignore the first two elements of this screen.

In its Petition, PMN demonstrated how one or both of the first two screening criteria are met in each South Carolina market. Verizon and Alltel do not dispute that the South Carolina markets satisfy these screening criteria. Accordingly, regardless of the spectrum screen applied by the Commission,<sup>1</sup> the South Carolina markets fall within the screen and must be subject to additional Commission scrutiny.<sup>2</sup>

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<sup>1</sup> Verizon argues that the 95 MHz spectrum screen endorsed and utilized by the Commission only ten days earlier in its *Verizon/RCC Merger Order* is somehow out of date and now requires the inclusion of AWS-1, BRS/EBS and MSS/ATC spectrum. For the same reasons as set forth in the *Verizon/RCC Merger Order* and in PMN's Petition, the current 95 MHz screen should remain in place. *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of*

## II. An Analysis of Each South Carolina Market Demonstrates the Likelihood of Harmful Competitive Impact

For markets captured by the Commission’s initial screen, the Commission employs a granular analysis which considers variables that the FCC has determined are important for predicting the incentive and ability of service providers to successfully restrict competition on price or non-price terms through coordinated interaction, and the incentive and ability of the merged entity unilaterally to elevate prices or suppress output.<sup>3</sup> These variables include: (1) the total number of rival service providers; (2) the number of rival firms that can offer competitive nationwide service plans; (3) the coverage of the firms’ respective networks; (4) the rival firms’ market shares; (5) the merged entity’s post-transaction market share and how that share changes as a result of the transaction; (6) the amount of spectrum suitable for the provision of mobile telephony services controlled by the combined entity; and (7) the spectrum holdings of each of the rival service providers.<sup>4</sup> In reaching its determinations, the Commission will balance these factors on a market-specific basis and consider the totality of the circumstances in

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*Licenses, Authorizations, and Spectrum Manager Leases*, Files Nos. 0003155487, et al., WT Docket No. 07-208, Memorandum Opinion and Order, FCC 08-181 (rel. August 1, 2008) (“*Verizon/RCC Merger Order*”). In addition, PMN notes that in South Carolina, all EBS spectrum is held by the State, and to date no commercial provider has even made a request to lease any of this spectrum. In South Carolina, the clearance of AWS-I spectrum is at least several years away, and the Opposition’s contention that “AWS should be regarded as being available for use in the sufficiently near-term” is simply incorrect. At the very least, the issue of AWS-I spectrum availability is an issue of material fact, which should be addressed by the Commission in the context of a formal hearing.

<sup>2</sup> As noted in the Petition, several South Carolina markets also fall within the Commission’s spectrum screen.

<sup>3</sup> *Verizon/RCC Merger Order* at par. 70.

<sup>4</sup> *Id.*

each market.<sup>5</sup> PMN's analysis of each South Carolina market follows below.<sup>6</sup> To the extent the analysis raises any material issues of fact, they may be resolved at a hearing pursuant to Section 309(e).

**CMA 67 (Greenville, SC).** In the three counties comprising CMA 67, which is the largest market in South Carolina, there stand to be only three truly viable competitors post-merger. Cavalier Wireless, LLC ("Cavalier") is the only company outside of the "national operators" to own licenses in the Cellular, PCS, ESMR and 700 MHz bands in Greenville, Pickens and Spartanburg counties. Cavalier's sole license is not only newly acquired, but it is in a band that has not seen any appreciable commercial build out in that region by 700 MHz competitors. For these reasons, Cavalier must be excluded as a genuine competitor in Greenville. While Sprint and T-Mobile are both licensed operators in the counties comprising CMA 67, they are dependent upon either AT&T or the combined Verizon/Alltel for roaming in rural portions of the market. Without recourse to in-market (home) roaming guarantees from the FCC, both Sprint and T-Mobile stand to lose existing roaming coverage (and with it market share) that helps them remain genuine competitors. Finally, a combined Verizon-Alltel will own over one-third of the spectrum in the Cellular, PCS, ESMR and 700 MHz bands, and control two-thirds of all

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<sup>5</sup> In examining the markets in South Carolina, it should be noted that Verizon has chosen to divest the poorest, most rural and least populous areas of the combined Verizon/ALLTEL portfolio, a strategy that flies in the face of Verizon's lengthy discourse on the merger's pro-competitive benefits for rural current and future customers of the combined entity. *See* Divested Market Analysis, attached hereto as Exhibit A.

<sup>6</sup> The Opposition states that PMN's Petition "attempt[s] to create alarmist statistics of aggregation by citing to and creating analyses of markets Verizon Wireless will have no interest in post-transaction." Opposition at p. 38. In addressing the markets in which Verizon has already committed to divest, PMN simply indicated that these markets are among those which must be divested. In making its divestiture commitment, Verizon did not specify exactly what is was committing to divest in each of those markets. Accordingly, these markets should be subject to PMN's proposed divestiture conditions, and are discussed in PMN's market by market analysis. In addition, exactly what Verizon is committing to divest in each of these markets is an issue of material fact which needs to be resolved in a hearing pursuant to Section 309(e) of the Communications Act of 1934, as amended ("the Act).

“beachfront” (Cellular and 700 MHz) spectrum currently available. Should the transaction close without divestitures, a post-merger Verizon would compete directly against, *at most*, three genuinely operational competitors, two of which are dependent themselves upon roaming in the market. These factors, combined with Verizon’s post-merger market share exceeding 50 percent, indicate a noncompetitive market and a strong need for divestiture.

**CMA 90 (Charleston, SC).** The competitive situation in Charleston is very similar to that in Greenville. Instead of Cavalier, there exist two newly licensed 700 MHz entities, MilkyWay Broadband, LLC (“MilkyWay”) and Continuum 700 LLC (“Continuum”). However, just like Cavalier, neither of these companies has an active network today, and thus, neither can be considered genuine competitors of Verizon. While Cricket Communications (“Cricket”) does own a license in Berkeley, Charleston and Dorchester counties, it comprises only 10 MHz and is inadequate for immediate capacity expansion beyond what exists today. Furthermore, Cricket, Sprint and T-Mobile are dependent upon either AT&T or the combined Verizon-Alltel for roaming coverage in rural portions of those counties, especially in Berkeley County. In addition to owning over one-third of the spectrum in the Cellular, PCS, ESMR and 700 MHz bands, and controlling two-thirds of all “beachfront” spectrum currently available in the market, Verizon will stand to own 77% more spectrum than AT&T, its next largest competitor. What’s more, Verizon will own more spectrum in each of the three counties than both Sprint and T-Mobile combined. In the Charleston market, a post-merger Verizon would compete directly against, at most, four operational competitors, three of which are dependent upon roaming, and one of which, Cricket, is unable to provide a truly

nationwide consumer product. These factors, combined with Verizon's post-merger market share exceeding 50 percent, indicate a noncompetitive market and a strong need for divestiture.

**CMA 95 (Columbia, SC).** The level of retail CMRS competition and roaming availability in Richland and Lexington counties mirrors that in the Greenville market, with one major exception, and that is, that a post-merger Verizon will own 122 MHz of total CMRS spectrum, including AWS frequencies. Despite Alltel and Verizon's combined holdings of 102 MHz in the Cellular, PCS, ESMR and 700 MHz bands, Verizon argues that there is plenty of competition in the market. As was explained in the Greenville market, Cavalier is not yet an operational entity, and Sprint and T-Mobile are dependent upon Verizon/Alltel and AT&T respectively for roaming coverage, especially in the southern portions of each county. Again, without the security of in-market roaming, Verizon's second and third closest competitors (T-Mobile and Sprint) are at a severe disadvantage when it comes to retail market competition. Furthermore, all of the "potential entrants" that the Applicants mentioned in Attachment 2 of their Joint Opposition would be at an even greater disadvantage upon market entry, and would be statistically irrelevant in any competitive analysis involving market share. Once again, Verizon will own more spectrum in both Lexington and Richland Counties than both Sprint and T-Mobile *combined*, and almost 60% more spectrum than AT&T, its next largest competitor. These factors, combined with Verizon's post-merger market share exceeding 50 percent, indicate a noncompetitive market and a strong need for divestiture.

**CMA 108 (Augusta, GA).** CMA 108 consists of four counties along the Georgia-South Carolina border, and it also encompasses the cities of Augusta, GA and

Aiken, SC. Just as with Greenville and Columbia, the only non-nationwide licensee present in the Augusta market is Cavalier, which for all the aforementioned reasons, should be excluded from any meaningful analysis of genuine competitors. This leaves only three meaningful competitors operational in the Cellular, PCS, ESMR and 700 MHz bands, all of whom are the same nationwide competitors. And yet again, Sprint and T-Mobile are dependent upon roaming from Verizon/Alltel and AT&T, or have no coverage at all in the more rural portions of the Augusta market. This is especially true in the northeastern corner of Aiken County, as well as in other parts of the three counties in Georgia. This paucity of competition, combined with Verizon's post-merger market share exceeding 50 percent, indicates a noncompetitive market and a strong need for divestiture.

**CMA 227 (Anderson, SC).** The competitive situation in Anderson County, the sole county comprising CMA 227, is illustrative of the rest of the state of South Carolina, and shows just how disproportionately larger a combined Alltel-Verizon would be post-merger without divestiture. The facts speak for themselves. First, Verizon stands to control 102 MHz of available Cellular, PCS, ESMR and 700 MHz spectrum. Second, its ownership percentage of the available spectrum in these bands is just shy of 40% of the total. Third, just as in the vast majority of the 46 counties in South Carolina, Verizon will own two-thirds of the prime "beachfront" spectrum in the Cellular and 700 MHz bands. Fourth, Verizon will be almost twice the size of AT&T, its next largest competitor. Fifth, and perhaps most startling, should the merger proceed without conditions, Verizon will stand to own more spectrum than Sprint, T-Mobile and both of the remaining 700 MHz license holders (Cavalier and West Carolina Communications) *combined*. It is with an

alarming amount of hubris that Verizon asserts that genuine competition in the CMRS marketplace exists today in Anderson County and will exist in the future after the merger. Verizon's dominant spectrum position in this market, combined with Verizon's post-merger market share exceeding 50 percent, indicates a noncompetitive market and a strong need for divestiture.

**CMA 264 (Florence, SC).** Despite consisting of only one county, Florence County, CMA 264 highlights yet again potential dominance of a Verizon-Alltel combination in South Carolina. Sprint and T-Mobile lack sufficient coverage in the southern part of the county and both rely heavily on roaming. Horry and FTC Management Group, each owners of 700 MHz licenses, are not yet operational, and even Cricket, owner of 10 MHz of PCS spectrum, has yet to launch retail service in Florence County. Furthermore, not only will Verizon own 77% more spectrum in the Cellular, PCS, ESMR and 700 MHz bands than AT&T, its largest competitor; it will own 130% more spectrum than T-Mobile, its second largest competitor. If that were not telling enough, a post-merger Verizon without divestitures would own more spectrum in those same bands than both AT&T and T-Mobile *combined*. Should the transaction close without divestitures, a post-merger Verizon would compete directly against, at most, three genuinely operational competitors, two of which are dependent themselves upon roaming in the market. Verizon's dominant spectrum position and the absence of meaningful competition, combined with Verizon's post-merger market share exceeding 50 percent, indicates a noncompetitive market and a strong need for divestiture.

**CMA 625 (SC-1).** In Oconee County, the sole county comprising CMA 625, a combined Verizon-Alltel will own nearly twice as much spectrum in the Cellular, PCS,

ESMR and 700 MHz bands as AT&T, its next largest competitor. As with previous CMAs in the state, the only genuine competitors in operation today are the national operators, and just as in the rest of the state, Sprint and T-Mobile are dependent upon roaming. Verizon's expected spectrum holdings in these bands, post-merger, will total 102 MHz. These factors, combined with Verizon's dominant post-merger market share which approaches 90 percent in some portions of the county, indicate a noncompetitive market and a strong need for divestiture.

**CMA 626 (SC-2).** CMA 626 consists of seven counties in northwestern South Carolina. The combined spectrum of Verizon and Alltel in the Cellular, PCS, ESMR and 700 MHz bands will exceed the 95 MHz threshold. In addition to Cavalier, the only other non-national licensees are Piedmont Rural Telephone and The Eezinet Corporation, whose spectrum holdings dwarf a combined Verizon-Alltel. Vast portions of the market are devoid of T-Mobile and Sprint native coverage, which is largely confined to ribbon coverage on the major US Highways and federal Interstates. Specifically, there is no Sprint or T-Mobile presence in the town of Saluda, the capital seat of Saluda County, and most of the county itself. At most, Verizon will face three market competitors post merger, and in some portions of SC-2, AT&T will stand to become the only true market competitor of Verizon to keep it in check. These factors, combined with Verizon's post-merger market share, which exceeds 50 percent throughout the market and likely approaches 90 percent in some counties, indicate a noncompetitive market and a strong need for divestiture.

**CMA 627 (SC-3).** In the four counties comprising CMA 627, there yet again stands to be only three genuine competitors to Verizon should the merger proceed

without any conditions imposed. Much of the geography of CMA627 lies in the “triangle” of Interstates 26, 77 and 85, connecting the metropolitan markets of Columbia, Greenville-Spartanburg and Charlotte, NC. Thus, much of the market is truly rural. Amongst the four counties, the only new market entrants in the 700 MHz band are Cavalier and Chester Telephone Company, and both are non-operational today. The only existing licensee in the Cellular, PCS, ESMR and 700 MHz bands who is operating today is Comporium, LLC. Cricket owns 10 MHz of PCS spectrum as well in that county, but it is not yet offering service that far south of its limited Charlotte network. As discussed in connection with the markets above, particularly the rural markets, the actual coverage of Sprint and T-Mobile pales in comparison to that of Verizon/Alltel and even AT&T. Both of those PCS-dependent operators must rely on roaming to fill out their coverage holes, despite the uncertainty of the home-market roaming exclusion and any future changes by the Commission in the Roaming Docket. Neither Sprint nor T-Mobile have any appreciable network to speak of in these rural environs, and in the case of T-Mobile, it is absent from the county seats in two of the four counties (Union and Chester), and must rely on tenuous AT&T roaming to remain even relevant in the competitive landscape. A post-merger Verizon stands to own 102 MHz of Cellular, PCS, ESMR and 700 MHz spectrum in the SC-3 market, which is more than double the amount of spectrum of its next largest competitor. This is in addition to the prospect of controlling two-thirds of the prime beachfront spectrum in the lower frequencies most suited for rural build-out. Sprint, T-Mobile and AT&T do not register more than 20 percent of the total license ownership in any of the four counties of CMA 627. In fact, in Chester County, T-Mobile and AT&T do not even register above 10 percent. A uniting of Alltel’s and

Verizon's networks and assets without any type of divestiture would result in an operational entity so large that it would render its already dwarfed competitors obsolete in any struggle for retail competition. These circumstances, combined with Verizon's post-merger market share, which exceeds 50 percent through the market and likely approaches 90 percent in some counties, indicate a noncompetitive market and a strong need for divestiture.

**CMA 628 (SC-4).** CMA 628 consists of five rural counties situated in north-central South Carolina. Among the 700 MHz license holders are Cavalier, Sandhill Communications and Horry Telephone Company, none of which are operational today in that band, and thus, not able to discipline a merged Verizon-Alltel. The only additional operational competitors are U.S. Cellular and Cricket, the latter of which is not even built out nor advertising service in the market. In any of the five counties, a post-merger Verizon will own at least 30% more spectrum than its next largest competitor, and in some counties, over 60% more spectrum in the Cellular, PCS, ESMR and 700 MHz bands. When it comes to actual coverage amongst the remaining genuine competitors, only AT&T and U.S. Cellular (which is absent in the rest of the state) offer any significant rural coverage. Sprint and T-Mobile should be outright excluded as genuine market competitors. Sprint relies predominantly on roaming with Verizon/Alltel in most of the five counties, and T-Mobile does have any network whatsoever in two of the five counties (Chesterfield and Marlboro). At most, a post-merger Verizon would face two serious competitors in CMA 628. The absence of competition, combined with Verizon's enhanced spectrum position and its post-merger market share in excess of 50 percent, indicate a noncompetitive market and a strong need for divestiture.

**CMA 629 (SC-5).** With two of its three counties situated along the coast, CMA 629 is arguably the most non-rural of the South Carolina RSAs, especially near the city of Myrtle Beach. Nonetheless, a post-merger Verizon will own between 25-30% of the available spectrum in the Cellular, PCS, ESMR and 700 MHz bands. Verizon's spectrum position, combined with its post-merger market share exceeding 50 percent, indicate a need for divestiture.

**CMA 630 (SC-6).** In each of the four counties comprising CMA 630, a combined Verizon-Alltel will own two-thirds of all beachfront spectrum in the Cellular and 700 MHz bands. Furthermore, a post-merger Verizon will own over twice as much spectrum as FTC Management Group, its next largest competitor in each of those counties, and that is including FTC's 700 MHz license which has not yet been built-out. Horry and Cavalier, the other 700 MHz license owners have not yet constructed, and while FTC has a presence in this particular CMA, it still has holdings less than half the size of Verizon-Alltel. Perhaps the most telling fact in CMA 630 is that in each of the four counties, and without exception, the combined spectrum of AT&T, T-Mobile and Sprint, when combined in the Cellular, PCS, ESMR and 700 MHz bands, is still less than that of a post-merger Verizon. Verizon and Alltel, two of the largest operators in the country, and the two largest in the state, wish to combine not just their overwhelming market shares, but also their tremendous assets. The fact that Verizon did not include CMA 630 in any list of potential asset divestiture is surprising. The huge discrepancy in amount of network coverage between Alltel and Verizon and the other operators while noteworthy, at least in this one instance, is immaterial. If the three remaining nationwide CMRS operators were to combine and still be overshadowed by Verizon, how can

anyone expect new market entrants with 10 and 12 MHz licenses and no existing network to compete AND gain any appreciable market share, especially if Verizon denies roaming access within the “home market?” Finally, how are mobile customers in these four counties gaining any real viable choices in the short term? For all the reasons discussed above, the combination of Verizon and Alltel will not only doom existing and future market entrants, it will create an anti-competitive marketplace that will severely impact the choices normally afforded to wireless consumers. These circumstances, combined with Verizon’s post-merger market share exceeding 50 percent, indicate a strong need for divestiture.

**CMA 631 (SC-7).** The five counties which comprise this market are each heavily rural and extend from the center of the state to the Georgia border. With the exception of Interstate 26 running through Orangeburg and Calhoun counties, Sprint and T-Mobile essentially have zero presence in the SC-7 market. Customers of either of those operators, if there are any in the area, are completely dependent upon roaming from Verizon/Alltel and AT&T. No other CMRS licensees operate there today, including Cavalier and Cricket. This market would fit the archetypal definition of duopoly. Once again, in addition to controlling more spectrum in each county than its “competitors,” Verizon will stand to control two-thirds of beachfront spectrum so useful to servicing such rural, and sparsely populated markets. Sprint and T-Mobile, and especially no “potential entrant,” can become a genuine competitor in this market given the disproportionate amount of spectrum divided amongst the various licensees. This especially holds true when there are no assurances that home-market roaming privileges will exist in the future so that new operators are given an opportunity to compete. These

circumstances, combined with Verizon's dominant post merger market share – which approaches 90 percent in several counties in the market – is indicative of a noncompetitive market and a need for divestiture.

**CMA 632 (SC-8).** In the four counties comprising CMA 632, there stand to be only three truly viable competitors post-merger. MilkyWay Broadband, Continuum 700 and Cricket are the only companies outside of the “national operators” to own licenses in the Cellular, PCS, EMRS and 700 MHz bands in Beaufort, Colleton, Hampton and Jasper counties. Without any operational facilities today, none can be considered genuine competitors. While Sprint and T-Mobile are both licensed operators in the counties comprising CMA 632, they themselves are dependent upon either AT&T or the combined Verizon/Alltel for roaming in rural portions of the market. As with other CMAs in the state, without recourse to home-market roaming guarantees from the FCC, both Sprint and T-Mobile stand to lose existing roaming coverage (and with it, what little market share they do have). This roaming coverage is necessary to help them remain genuine competitors of Verizon. Additionally, a combined Verizon-Alltel will own two-thirds of all “beachfront” spectrum currently available. With the exception of coastal Beaufort County, the only significant coverage by Sprint and T-Mobile is along Interstate 95. This is further evidenced by the fact that both of those operators are completely absent from Hampton County, including the county seat of Hampton itself, and any road in that county with the exception of Interstate 95. It is hard to advocate that a carrier which provides one or two miles of coverage extending from either side of a highway is a genuine competitor when compared to blanketed coverage. Nonetheless, even assuming that is the case, a post-merger Verizon would compete directly against, at most, three

genuinely operational competitors, two of which are either heavily dependent themselves upon roaming in the market, or void of coverage altogether. These factors, combined with Verizon's post-merger market share exceeding 50 percent, indicate a noncompetitive market and a strong need for divestiture.

**CMA 633 (SC-9).** SC-9 is comprised of two South Carolina counties, York and Lancaster, that are immediately south of the Charlotte, North Carolina metropolitan area. They are a mixture of suburbs, commuter communities and rural expanses. CMA 633 demonstrates how difficult competing against a combined Verizon-Alltel might be given just how much spectrum the combined entity would own and the reluctance by Verizon to both acknowledge its dominant market share and offer to divest itself of any assets in the market. Quite simply, a post-merger Verizon in Lancaster County will own 170% more spectrum than Sprint, 410% more than T-Mobile, and 750% more than AT&T in the Cellular, PCS, ESMR and 700 MHz bands. Although Verizon's post-merger market share again exceeds 50 percent, it is unnecessary to delve into market-share and coverage comparisons when the playing field is so one-sided from the onset. Verizon's spectrum interest in this market must be divested.

### **III. The Public Interest Harms Likely to Result from the Proposed Merger Outweigh any Potential Merger Benefits**

While Verizon and Alltel emphasize in their Opposition that "only one petitioner [Leap Wireless] even attempts to contest the public interest showing in the

Applications,”<sup>7</sup> they neglect to mention that the FCC’s public interest test examines public interest harms as well as public interest benefits. In applying its public interest test under Sections 214(a) and 310(d) of the Communications Act of 1934, as amended (“the Act:”), the FCC employs a balancing test weighing any potential public interest harms against any potential public interest benefits to ensure that the proposed transaction, on balance, serves the public interest.<sup>8</sup> PMN demonstrated in its petition that the arguable public interest benefits of the proposed merger cited by Verizon and Alltel do not outweigh the competitive harms that would result from approval of the merger. Verizon and Alltel have not met their burden of proving that the proposed transaction, on balance, serves the public interest. At a minimum, the record presents a substantial and material question of fact as to whether the proposed merger satisfies the Commission’s public interest test, and Section 309(e) of the Act therefore requires that the FCC designate the Applications for hearing.

#### **IV. The Proposed Divestiture Conditions are Appropriate**

In its Petition, PMN requested that the FCC require Verizon to divest: (1) all spectrum in excess of 55 megahertz in the bands below 1 GHz; and (2) all spectrum in excess of 110 megahertz in the bands below 2.3 GHz. Verizon and Alltel oppose these proposed divestiture conditions, mistakenly arguing that PMN is attempting to institute “a new rule.” PMN is not requesting that the Commission establish any such rule in connection with this merger transaction. Rather, PMN is simply suggesting a method for

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<sup>7</sup> Opposition at p. ii.

<sup>8</sup> See, e.g., *Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer of Control of Licenses and Authorizations*, File Nos. 0003092368 et al., WT Docket No. 07-153, Memorandum Opinion and Order, FCC 07-196 at par. 10 (rel. November 19, 2007) (“*AT&T/Dobson Merger Order*”).

determining how much Alltel spectrum Verizon should be required to divest. As demonstrated in PMN's Petition, allowing Verizon to hold all of the spectrum it seeks to acquire from Alltel would be contrary to the public interest.<sup>9</sup> Accordingly, the only question remaining is *how much* spectrum should Verizon be required to divest.

PMN has suggested a rational and historically justifiable method for determining how much spectrum Verizon should be allowed to keep in each market. As stated in PMN's Petition, the proposed limit on the amount of spectrum below 2.3 GHz that Verizon should be allowed to retain in individual markets is consistent with precedent.<sup>10</sup> The proposed limit on the amount of spectrum below 1 GHz that Verizon should be allowed to retain in individual markets is also consistent with precedent.<sup>11</sup> Nonetheless, even if the FCC determines that PMN's proposed divestiture criteria should not be applied to this transaction, this by no means obviates the need for some divestiture of

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<sup>9</sup> PMN finds the statement in the Opposition that "petitioners fail to provide any evidence of potential adverse competitive effects" perplexing. Opposition at p. 13. PMN's petition contains extensive evidence of potential adverse competitive effects of the proposed merger. See Petition at pp. 2-21, 29-31.

<sup>10</sup> Verizon and Alltel claim that PMN "ignore[es] substantial precedent that hard limits on spectrum aggregation do not serve the public interest." Opposition at p. iii. Contrary to this assertion, there is substantial precedent that hard limits on spectrum aggregation serve the public interest. *Implementation of Sections 3(N) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool*, PR Docket No. 89-553, Third Report and Order (rel. September 23, 1994). While the FCC has subsequently determined that a spectrum cap *no longer* serves the interest due to an increasingly competitive CMRS marketplace, it has never stated that a spectrum cap as a method for ensuring competition is contrary to the public interest. To the contrary, even after concluding that the spectrum cap should no longer be applied on a long term basis, the FCC retained the cap on a temporary basis.

<sup>11</sup> Verizon and Alltel argue that PMN "disingenuously" argues that requiring divestiture of spectrum in excess of 55 megahertz below 1 GHz is consistent with the FCC's 1999 decision to impose a 55 MHz cap on ownership of cellular, PCS and SMR spectrum because PMN did not cite to the FCC's subsequent decision doing away with this cap. Far from "disingenuous", the elimination of the spectrum cap should go without saying. Indeed, if PMN was trying to mislead the Commission into believing that the 55 MHz cap is still in place, why would it be trying to persuade the FCC to adopt such a limit on the post-merger spectrum that Verizon may hold?

spectrum in each South Carolina market. The FCC should at a minimum require divestiture of all spectrum held by Alltel or Verizon in South Carolina consistent with conditions imposed by the FCC in recent merger transactions.<sup>12</sup>

## **V. Conclusion**

For the reasons set forth in its Petition and herein, PMN respectfully requests that the Commission deny the above-referenced Applications or, in the alternative designate the Applications for Hearing. Alternatively, PMN requests that the Commission impose upon any grant of such Applications each of the Conditions set forth in its Petition to Deny.

Respectfully Submitted,

**PALMETTO MOBILENET, L.P.**

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<sup>12</sup> See, e.g., *Verizon/RCC Merger Order* at par. 113 (requiring the divestiture of spectrum held by either Verizon or RCC).

## Exhibit A

### DIVESTED MARKET ANALYSIS

The manifest weaknesses and inconsistencies in Verizon's market-by-market analysis beg a very salient question: what rationale *actually does* explain Verizon's list of offered divestitures? Verizon's Opposition cites the following two primary criteria for choosing the 85 CMAs spanning 18 states:

1. "to avoid any competitive issues" that might arise during the regulatory approval process;<sup>1</sup> and
2. as a commitment to "divest overlapping properties.... [eliminating] the primary overlap areas between Verizon Wireless' and ALLTEL's networks leaving only the truly complementary assets and capabilities in the combined company."<sup>2</sup>

Verizon has offered CMAs 625, 626, 627 and 631 in South Carolina for divestiture.

Curiously, Verizon's divestiture choices in South Carolina appear to bear little correlation with Verizon's own divestiture criteria. As stated in PMN's Petition,<sup>3</sup> petitioners are informed and believe that the change in HHI post-merger in all South Carolina markets would range from approximately three to 16 times the 250 threshold that triggers heightened scrutiny.<sup>4</sup> Thus, even though its market share data would be

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<sup>1</sup> *Verizon Opposition* at 13.

<sup>2</sup> *Id.* at 36.

<sup>3</sup> *Petition* at 4-5.

<sup>4</sup> Although Verizon correctly points out that the two HHI screens and spectrum screen merely trigger additional analysis of each market captured by one of the three screens, it fails to acknowledge that the degree to which a market exceeds a particular screen should have some bearing upon the lens through which that market should be viewed. For example, a change in HHI of 251 resulting from a merger is markedly different from a change of 4,000; although both are captured by the applicable screen, the latter change figure creates a far more troubling inference regarding the merger's impact on competition.

closely held, it seems reasonable that Verizon's market-by-market analysis would have included all South Carolina CMAs and not merely those that are captured by the 95-MHz screen (CMAs 95, 227 and 633). At very least, one would have expected that Verizon's Opposition would have made a general statement refuting PMN's and other petitioners' allegations regarding post-market HHI, but no such refutation was forthcoming.<sup>5</sup>

Verizon's choice to only offer market-by-market analysis based on spectrum holdings and ignoring market share analysis completely would seem to imply that Verizon's own concern regarding "avoid[ing] any competitive issues"<sup>6</sup> was constrained to spectrum holdings. However, given that Verizon/ALLTEL would possess spectrum in excess of 95 MHz in *none* of the five counties that comprise divested CMA 631 (the respective holdings being 72, 72, 92, 92 and 92 MHz in those counties), Verizon's complete reliance on spectrum holdings appears implausible as well. Such a theory is even more implausible considering that three other CMAs captured by a 95-MHz screen (CMAs 95, 227 and 630) did not make Verizon's "initial cut" for divestiture. Indeed, Verizon takes great pains in its Opposition to distinguish these markets from other CMAs in South Carolina, despite possessing many *times* the spectrum than most, if not all, of its competitors in each of these markets, and in some instances possessing more spectrum than all other competitors *combined*.

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Concurrently, the same troubling inference exists for transactions that create spectrum holdings and market share that are captured by all three screens as opposed to just one. In South Carolina, as petitioners have stated, it appears that almost half of the CMAs in the state are captured by all three screens, and in all CMAs, the merger will yield HHI changes many times over and beyond the 250 threshold.

<sup>5</sup> Indeed, in more than 250 pages of text, Verizon only mentions the HHI screen once in-text and twice in footnotes. *See Opposition* at 17 n. 47, 19 n. 52 and 40.

<sup>6</sup> *Id.* at 13.

Turning to Verizon's second stated consideration, a commitment to "divesting overlapping properties"<sup>7</sup> of the combined Verizon /ALLTEL, Verizon's own divestiture criteria once more do very little to explain either the properties it has offered to divest or the properties it has attempted to justify retaining. Even though there is substantial overlap in virtually every CMA in South Carolina, Verizon only offers four overlapping properties for divestiture. Once again, Verizon's divestiture offerings appear not to correlate in any logical way with either of its own divestiture criteria.

However, based on the totality of Verizon's actions and filings, there is only one valid explanation for Verizon's divestiture list, both with regard to its inclusions and its omissions. Stated simply, a closer examination of South Carolina markets leads to the inevitable conclusion that Verizon has chosen to divest those counties with the least potential for profit—most often the poorest, most rural and least populous areas of the combined Verizon/ALLTEL portfolio—and chosen to fight for those markets that contain the best potential return on Verizon's investment. Verizon's actions demonstrate a clear disdain for rural cellular customers, a fact that flies in the face of Verizon's lengthy discourse in its various filings on the pro-competitive benefits of the merger for rural telephone service in America.

The following demographic analysis provides a very clear picture of Verizon's actions. The stark contrast between those markets Verizon has offered to divest and those properties Verizon asserts that it should be allowed to retain demonstrates that Verizon's divestiture strategy has little to do with market concerns, overlapping properties or any interest it has in providing cellular service to rural America.

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<sup>7</sup> *Id.* at 36.

## Population

Verizon's offered divestitures in South Carolina represent 37 percent of the state's counties (17 of 46), yet these 17 counties only contain approximately 14 percent of the state's population.<sup>8</sup> Indeed, 10 of the 15 least densely populated counties in South Carolina are found within the four CMAs offered for divestiture.<sup>9</sup>

Three of the four CMAs (626, 627 and 631) contain counties with an average population of less than 37,000.<sup>10</sup> In contrast, all other CMAs in South Carolina have an average county population exceeding 45,000 per county (with only two additional CMAs having an average population per county of less than 56,000). Contrasting with these low-population CMAs is CMA 633, for which the average population per county is 135,078<sup>11</sup> (CMA 633 is one of the three CMAs in which a combined Verizon/ALLTEL would hold spectrum and market share likely exceeding all applicable screens but that Verizon has attempted to justify retaining). The table below shows average populations for each South Carolina CMA.

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<sup>8</sup> Bureau of Economic Analysis – Regional Economic Accounts (2006), <http://www.bea.gov/region/reis/drill.cfm> (last accessed Aug. 25, 2008)

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

<sup>10</sup> *Id.* Oconee County (CMA 625), the lone divested CMA that has a population of greater than 37,000, is a very mountainous region with almost 8 percent of its land area covered by water. Additionally, a very small portion of its land area is adjacent to an interstate highway, with Interstate 85 passing Oconee's southern border.

<sup>11</sup> *Id.*

CMA	Population	Population/C ounty
631	153,865	30,773
627	138,172	34,543
626	254,427	36,347
628	226,245	45,249
630	192,415	48,104
632	225,166	56,292
625	69,993	69,993
629	333,850	111,283
264	130,852	130,852
633	270,155	135,078
108	150,220	150,220
227	177,086	177,086
90	617,172	205,724
67	800,996	266,999
95	589,494	294,747
divested		

Additionally, the smallest three RSAs in terms of workforce population are among the CMAs offered by Verizon for divestiture, as shown in the table below. The lone outlier, CMA 626, contains a disproportionately large number of counties compared with other CMAs (seven). However, CMA 626 has one of the three lowest average workforce populations per county at 17,056.<sup>12</sup>

CMA	workforce	workforce/c ounty
625	30,369	30,369
264	63,243	63,243
627	64,093	16,023
631	66,946	13,389
108	75,161	75,161
630	82,355	20,589
227	85,106	85,106
632	100,247	25,062
628	105,597	21,119
626	119,391	17,056
633	133,965	66,983
629	173,788	57,929
95	311,241	155,621
90	313,324	104,441
67	411,690	137,230
divested		

<sup>12</sup> Bureau of Labor Statistics – U.S. Department of Labor, 2007 Unemployment Statistics, <http://data.bls.gov/PDQ/outside.jsp?survey=la> (last accessed August 19, 2008).

Education

The four CMAs on Verizon’s South Carolina divestiture list also represent a grossly disproportionate share of the least educated areas of the state. The table below compares the 17 counties offered for divestiture against South Carolina averages in four categories.

	% of population having less than 9th grade education	% of population having 9th-12th grade education (no diploma)	% of population having earned a high school diploma	% of population having attained at least 4 years of college
<b>South Carolina</b>	<b>8.3%</b>	<b>15.3%</b>	<b>76.3%</b>	<b>20.4%</b>
<b>COUNTY</b>				
Abbeville	11.9%	18.0%	70.1%	12.7%
Allendale	13.7%	26.3%	60.0%	9.3%
Bamberg	13.2%	22.2%	64.7%	15.4%
Barnwell	11.6%	20.9%	67.5%	11.6%
Calhoun	10.1%	17.1%	72.8%	14.2%
Cherokee	13.6%	19.6%	66.7%	11.8%
Chester	11.0%	21.8%	67.1%	9.6%
Edgefield	12.0%	16.6%	71.4%	12.5%
Fairfield	11.6%	21.4%	67.0%	11.7%
Greenwood	10.1%	16.8%	73.1%	18.9%
Laurens	12.6%	19.7%	67.7%	11.7%
McCormick	14.0%	19.9%	66.1%	16.0%
Newberry	11.7%	19.2%	69.1%	14.8%
Oconee	11.1%	15.0%	73.9%	18.1%
Orangeburg	10.1%	18.4%	71.5%	16.3%
Saluda	11.6%	19.1%	69.3%	11.9%
Union	13.5%	19.6%	66.9%	9.8%

It is worth noting that every county in the divested CMAs exhibits greater percentages of high school drop-outs and lower percentages of citizens who have earned either a high school diploma or college degree than the South Carolina average.<sup>13</sup>

Additionally, based on statistics compiled by the South Carolina Commission on Higher Education, 12 of the 15 counties in South Carolina with the lowest numbers of

<sup>13</sup> South Carolina Statistical Abstracts, Educational Attainment for Persons 25 Years and Over on April 1, 2000, <http://www.ors2.state.sc.us/abstract/chapter1/countyrank6.php> (last accessed Aug. 25, 2008).

students admitted to a four-year in-state college are among the 17 counties Verizon has offered to divest.<sup>14</sup> Once again, RSA 9 (CMA 633), one of the markets in which Verizon has engaged in a detailed market analysis because of excessive spectrum holdings, provides a stark contrast to the educational demographics of divested properties. York and Lancaster Counties, the two counties comprising this market, rank fifth and 23rd, respectively, in the numbers of residents admitted to four-year colleges in South Carolina.<sup>15</sup> Additionally, York County, whose population comprises almost 75 percent of CMA 633, performs better than the South Carolina average across all levels of education, as shown in the table below.<sup>16</sup>

	<b>% of population having less than 9th grade education</b>	<b>% of population having 9th-12th grade education (no diploma)</b>	<b>% of population having earned a high school diploma</b>	<b>% of population having attained at least 4 years of college</b>
<b>South Carolina</b>	<b>8.3%</b>	<b>15.3%</b>	<b>76.3%</b>	<b>20.4%</b>
York County	7.7%	15.0%	77.2%	20.9%

Income/Economic Development

Based on the educational plight of the counties represented by Verizon’s list of offered divestitures, it is no surprise that divested counties are among the very poorest and least developed areas in the state. For example, half of the 20 lowest per-capita income counties in South Carolina are located in the four divested CMAs, even though divested CMAs comprise just more than one-third of South Carolina’s 46 counties.

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<sup>14</sup> South Carolina Commission on Higher Education, Academic Year 2007 Enrollment Reports, [http://www.che.sc.gov/Finance/CHEMIS/Fall2007/Enrollment/Public/Fall2007\\_CountyOrigin.xls](http://www.che.sc.gov/Finance/CHEMIS/Fall2007/Enrollment/Public/Fall2007_CountyOrigin.xls) (last accessed Aug. 25, 2008).

<sup>15</sup> *Id.*

<sup>16</sup> South Carolina Statistical Abstracts, Educational Attainment for Persons 25 Years and Over on April 1, 2000, <http://www.ors2.state.sc.us/abstract/chapter1/countyrank6.php> (last accessed Aug. 25, 2008). These trends are also reflected in the two MSAs for which Verizon has engaged a detailed market analysis.

Additionally, of the 10 poorest counties in terms of aggregated personal income, seven are in the divested CMAs.<sup>17</sup>

The South Carolina Department of Revenue (“DOR”) annually publishes its Job Tax Credits Rankings by county, separating South Carolina’s 46 counties into five categories based on unemployment and per capita income.<sup>18</sup> The five ranking categories, from worst rating to best, are: 1) Distressed; 2) Least Developed; 3) Under-Developed; 4) Moderately Developed; and 5) Developed. Twelve of the 17 counties on Verizon’s divestiture list were categorized by DOR as Distressed or Least Developed. In contrast, not a single county on the divestiture list qualified as Developed, and only two even qualified as Moderately Developed.

Related to the Job Tax Credit Rankings, the South Carolina Code of Laws provides for a moratorium on corporate income taxes for new businesses in those counties that either have 1) twice the unemployment rate of the aggregate South Carolina unemployment rate; or 2) have one of the three lowest per capital incomes of any county in the state.<sup>19</sup> Currently, two of the three counties qualifying for moratorium status, McCormick and Allendale Counties, are among the 17 counties Verizon has offered to divest.

#### Additional Market Issues: You Can’t Judge a Book by its Cover

PMN concedes that some of the demographic factors that appear to have greatly influenced Verizon’s decision to offer certain properties for divestiture while withholding

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<sup>17</sup> Bureau of Economic Analysis – Regional Economic Accounts (2006), <http://www.bea.gov/region/reis/drill.cfm> (last accessed Aug. 25, 2008)

<sup>18</sup> South Carolina Department of Revenue, 2008 Job Tax Credits Rankings (Jan. 3, 2008).

<sup>19</sup> See S.C. Code Ann. § 12-6-3367(B)(1) (LEXIS 2008).

others also exist in other CMAs as well. However, in each case, plausible distinctions exist.

For example, CMA 630, which exhibits demographic characteristics similar to some of the poorer divested counties, is a primary travel corridor through which tourists visit South Carolina's Grand Strand region (Myrtle Beach, Pawleys Island, etc.). Presumably, Verizon is loath to give up geography in which roaming traffic is particularly heavy.

Likewise, CMA 632 contains some of the state's poorest and most rural counties. However, the three poor and less densely populated counties in the CMA are a corridor to Beaufort County/Hilton Head Island (also within the CMA); Beaufort is one of the most affluent and population-concentrated counties in South Carolina. Similarly, Lancaster County, in CMA 633, exhibits some common demographic characteristics with divested CMAs, but it is paired with York County, an affluent and densely populated suburban area of Charlotte, North Carolina. York County is simply too valuable for Verizon to offer to divest even in the face of substantial competition and spectrum concerns, so Lancaster County piggybacks York as a property Verizon has fought to keep.

In short, Verizon's divestiture list has been determined solely by considerations of its bottom line and not by any of its claimed benevolence in benefiting rural customers. Divested properties in South Carolina are almost universally comprised of the most rural areas serving some of the state's least affluent and least educated citizens. Where Verizon has not chosen to divest other rural and less affluent holdings in South Carolina, the markets in question are either: a) of strategic value to Verizon as corridors to the state's affluent coastal regions; or b) as in the case in CMAs 632 and 633, contain very affluent

counties that make the CMAs too valuable as a unit to divest, even when substantial spectrum and market share issues clearly exist.

#### The Significance of Verizon's Divestiture Strategy

On one hand, Verizon's divestiture strategy is logical: its *raison d'être* is to maximize profits. Thus, jettisoning markets that bear low profit potential makes good business sense. Indeed, if the regulatory approval process were merely a referendum on Verizon's business plan, the merger likely would merit swift approval.

However, given that perhaps the most prominent pro-competitive justification that Verizon has asserted in favor of the merger is the enormous boon to rural wireless customers, Verizon's unspoken—but certainly ever-present—criterion for casting off poor and rural markets taints the veracity of Verizon's competition analysis. At the very least, the Commission should refuse to consider any pro-competitive justification for the merger based on any alleged benefit Verizon's actions will have for rural America. Any such benefits, although unlikely given Verizon's track record in rural markets, will be coincidental at best. Ideally, the Commission should require Verizon to proffer evidence that markets in all other states do not exhibit Verizon's same disdain for rural America that is manifest in Verizon's offered divestitures in South Carolina.

## CERTIFICATE OF SERVICE

I, Colleen von Hollen, of Bennet & Bennet, PLLC, 4350 East West Highway, Suite 201, Bethesda, MD 20814, hereby certify that a copy of the foregoing "Reply to Joint Opposition to Petitions to Deny" of Palmetto MobileNet, L.P. was served on August 26, 2008, by first-class United States mail, postage prepaid, unless indicated otherwise, on those listed below:

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