Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings, LLC	)	WT Docket No. 08-95
	)	
For Consent to Transfer Control of Licenses, Authorizations, Spectrum Manager and *De Facto* Transfer Leasing Arrangements	)	File Nos. 0003463892, *et al.*, ITC-T/C-20080613-00270, *et al.*
	)	
and	)	
	)	
Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act	)	File No. ISP-PDF-20080613-00012

To: The Secretary
Office of the Secretary
Federal Communications Commission

REPLY TO JOINT OPPOSITION TO PETITION TO DENY

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August 26, 2008

ORIGINAL

SUMMARY

The relief requested by the Chatham Avalon Park Community Council ("CAPCC") should be granted. The applicants do not address the key facts that demonstrate that a targeted divestiture should be required and that their foreign ownership showing is inconsistent with requirements adopted in other proceedings.

First, the Joint Opposition largely repeats the arguments about wireless spectrum made in the merger applications, and does not address the showings made in CAPCC's petition. The applicants would have the Commission ignore the reasons it is improper to include AWS-1, BRS and MSS spectrum in the spectrum screen calculation; do not address the impact of the cluster of concentrated spectrum in the upper Midwest; and do not address the paucity of competition in those affected markets. They also mischaracterize CAPCC's proposed remedy and fail to acknowledge that granting a right of first negotiation to socially disadvantaged businesses would be consistent with both Commission policy and the Commission's recent action in the XM-Sirius merger.

Second, there is no rational or legal basis to accept the applicants' foreign ownership showing. The applicants rely on the *Verizon Wireless-RCC Order* rather than defend the showing itself. This ignores the inconsistency between the Merger Applications and earlier Commission decisions and the impermissibility of having one interpretation of Section 310(b) for Verizon Wireless and another for everyone else. The RCC decision itself is subject to a petition for reconsideration, and the Applicants, in another part of the Joint Opposition, argue that the Commission should not rely on the RCC decision at all. Moreover, licensees have an ongoing obligation to comply with foreign ownership requirements, even when their previous showings have been accepted.

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Chatham Avalon Park Community Council ("CAPCC"), by its attorneys, hereby replies to the Joint Opposition of Cellco Partnership d/b/a Verizon Wireless (together with its affiliates, "Verizon Wireless") and Atlantis Holdings LLC (together with its affiliates, "Atlantis," and, together with Verizon Wireless, the "Applicants") to the petition of CAPCC to deny the above-referenced applications (collectively, the "Merger Applications"), which request Commission authority for the transfer of control of ALLTEL Wireless and its affiliates ("ALLTEL") to Verizon Wireless.[1]

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[1] *See* Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and *De Facto* Transfer Leasing Arrangements, and Authorizations, and

I. Introduction

The Joint Opposition does not add much to the record on any of the issues described in the CAPCC Petition to Deny.[2] Verizon Wireless and Atlantis rely almost entirely on the Merger Applications and the Commission's *Verizon Wireless-RCC Order* to support their claims.[3] In doing so, they ignore the key facts that were highlighted in the CAPCC Petition. The Commission should not act on the Merger Applications without addressing these issues as proposed in the CAPCC Petition and herein.

Initially, the record demonstrates that the applicants should be required to divest spectrum and operations where the concentration that would result from the proposed transaction would be greatest, in Minnesota, Montana, North Dakota and South Dakota. Among the markets affected by the Merger Applications, these areas have the least wireless competition today, and would have even less after the transaction. The Joint Opposition largely repeats claims made in the Merger Applications about the availability of new spectrum in the AWS-1, BRS and MSS bands, without addressing the fundamental limitations that support the continuing exclusion of those bands from the Commission's spectrum calculations or the specific characteristics of the markets where CAPCC has proposed divestiture.

The Joint Opposition does not pay even that much attention to CAPCC's demonstration that the Commission should grant a right of first negotiation for the divested operations to socially disadvantaged businesses ("SDBs"). However, the facts demonstrate that diversity in

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Request a Declaratory Ruling on Foreign Ownership, FCC WT Docket No. 08-95, *Public Notice,* DA 08-1481 (rel. June 25, 2008) [hereinafter "*Notice*"].

[2] Petition to Deny of Chatham Avalon Park Community Council, WT Docket No. 08-95 (filed Aug. 26, 2008) [hereinafter "CAPCC Petition"].

[3] *In re Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation*, WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-181 (rel. Aug. 1, 2008) [hereinafter "*Verizon Wireless-RCC Order*"].

ownership in wireless has been declining and that the Commission has adopted more aggressive remedies as recently as in the XM-Sirius decision.

The Applicants also attempt to brush off CAPCC's demonstration that Verizon Wireless is seeking to have its foreign ownership approved with a showing that Commission not only has not approved for any other applicant but actually has stated will not be accepted. The Applicants' sole basis for using this approach is that it was approved in the *Verizon Wireless-RCC Order,* but that order is subject to a pending petition for reconsideration. In addition, the Commission has held repeatedly that foreign ownership compliance is an ongoing obligation, so Verizon Wireless is not entitled to rely on a past showing to support its compliance in this proceeding.

II. Spectrum Overlap Issues Must Be Resolved Before the Merger Applications Can Be Granted.

The Applicants devote a significant portion of the Joint Opposition to spectrum overlap issues and appropriate remedies. Review of those arguments, though, reveals that the Applicants largely repeat what they said in the Merger Applications and that, where they do respond to CAPCC's petition, they are wrong.

A. The Current Processing Screen Should Be Retained.

The Applicants' principal response to CAPCC's showing that the existing processing screen should be retained is to repeat the statements made in the Merger Applications. As shown in CAPCC's petition, however, that screen was retained by the FCC in the *Verizon Wireless-RCC Order*, and the changes that the Applicants propose to the screen would be inconsistent

with the Commission's own analysis.[4] For instance, both the *Verizon Wireless-RCC Order* and the *AT&T-Dobson Order,* each released in the last few months, concluded that both AWS-1 and BRS spectrum should not be considered when determining the screen.[5] The Applicants have no real response to these contemporaneous Commission decisions about the validity of the current 95 MHz screen.

Even leaving aside that the Joint Opposition contains almost no new information, the underlying analysis of the use of the spectrum that the Applicants would add to the screen is, at best, superficial. For instance, while not disputing that Clearwire is unlikely to reach more than one-third of the population in the foreseeable future, the Applicants argue that it nevertheless is appropriate to include that spectrum in the screen because it is possible it might be used.[6] However, the Applicants do not explain how spectrum that will not be used for at least the next several years (and, in rural areas, possibly never) can have an effect on the current state of competition.

Similarly, the Applicants' claim that AWS-1 spectrum is being deployed relies on the same limited roll-outs that were described in the Applications and on mischaracterization of the Commission's findings in the *Verizon Wireless-RCC Order.* In particular, the Applicants focus on NTIA data concerning government use of AWS-1 spectrum, without regard for the Commission's specific statement that this spectrum was constrained by both government and

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[4] CAPCC Petition at 6-10. Oddly, while dismissing the *Verizon Wireless-RCC Order* as to spectrum issues, the Applicants insist that it must be followed as to foreign ownership issues. Joint Opposition at 90.

[5] CAPCC Petition at 7, *citing Verizon Wireless-RCC Order*, ¶ 43 and *In re Applications of AT&T Inc. and Dobson Commc'ns Corp.*, Memorandum Opinion and Order, 22 FCC Rcd 20295, 20315 (2007) [hereinafter "*AT&T-Dobson Order*"].

[6] Joint Opposition at 25 n.76.

non-government uses.[7] Moreover, the Applicants distort the analysis of whether AWS-1 spectrum should be included in the general spectrum screen by looking only at counties where ALLTEL has spectrum.[8] Even then, AWS-1 spectrum availability is encumbered by government uses in nearly one-fourth of those counties, so it plainly is not available throughout even the ALLTEL footprint. Equally important, current and near-term deployment, as reported by the Applicants themselves, is focused on urban areas that are unaffected by the Merger Applications.[9]

The Applicants' reliance on MSS spectrum also is unconvincing. The "500 communities" that will be served through use of GlobalStar's spectrum are not significant to setting the level for the screen because those 500 communities are, as the Applicants originally acknowledged, in sparsely-populated rural areas.[10] The Applicants offer no evidence that GlobalStar actually can use this spectrum for terrestrial mobile service in most of the country. Since this spectrum also is used for other purposes by GlobalStar, there is good reason to think that there will be technical constraints in more populated areas. Moreover, as described in the Merger Applications and the Joint Opposition, the deployment of this service in the limited area where it will be available is being supported not by the marketplace, but by subsidized financing from the Department of Agriculture.[11] It is difficult to take the Applicants' claim that this

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[7] *Compare id.* at 22-23 *with AT&T-Dobson Order*, 22 FCC Rcd at 20314-15.

[8] Joint Opposition at 23.

[9] *Id.* at 23-24.

[10] Merger Applications, Description of Transaction, Public Interest Showing and Related Requests and Demonstrations, at 38, *citing* Press Release, Globalstar, Inc., FCC Expands Globalstar's Ancillary Terrestrial Component Authority (Apr. 10, 2008), http://www.globalstar.com/en/news/pressreleases/press_display.php?pressId=481.

[11] *Id.*; Joint Opposition at 28.

spectrum should be considered relevant to a national market seriously when it takes $267 million of government-supported financing to make it available in 500 rural communities.

The Applicants' efforts to shoehorn new spectrum into the base used to determine the screen demonstrate the wisdom of the Commission's conclusion that it is appropriate for the initial screen "to be conservative, that is, erring in the direction of identifying more rather than fewer markets for in-depth review."[12] Adding any of the spectrum that the Applicants suggest to the base for the screen would mean that the Commission was including spectrum that is not deployed in most of the country and that, as a practical matter, will not be deployed in most of the country for many years. It is far better to leave this spectrum out of the initial screen and consider its impact in individual markets.

B. The Evidence Supports Requiring Appropriate Divestiture.

Once the Commission determines which markets are outside the limits set in the spectrum screen, the next task is to determine which markets require divestiture. In one sense, the Commission's job has been made easier because the Applicants, despite their protests that such divestitures are entirely unnecessary, have agreed to divest certain affected markets. However, the Commission also should recognize that there are substantial reasons to require the divestitures proposed by CAPCC.

In response to the arguments that CAPCC and other petitioners make, the Applicants resort to mischaracterizing those arguments and knocking down the resulting straw men. For instance, the Applicants claim that CAPCC and others merely argue that there is not "enough information about local competitive effects."[13] They do not respond to CAPCC's showing that the specific overlap areas in the Minnesota, Montana, North Dakota and South Dakota are places

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[12] *Verizon Wireless-RCC Order*, ¶ 44, *citing AT&T-Dobson Order*, 22 FCC Rcd at 20314.

where there is less competition than in the rest of the country and that competitive risks are higher in those areas because the overlap areas are so closely clustered, limiting the ability of customers to choose alternatives.[14] These facts demonstrate why Applicants' claim that competitive harm will be prevented by the existence of a national wireless market is incorrect.[15]

Similarly, the Applicants' claim that CAPCC asks the Commission to treat the 95 MHz screen as a cap is entirely untrue.[16] First, as the Applicants acknowledge, CAPCC did not ask the Commission to require divestiture in every market where the new entity would exceed the 95 MHz threshold, but restricted its request to markets where the threshold would be exceeded by at least 20 MHz and to the contiguous markets in Minnesota, Montana, North Dakota and South Dakota where the competitive risks are highest.[17] Second, as noted above, CAPCC supports its divestiture proposal with specific facts about markets where competition would be at risk without a divestiture condition. This demonstrates that the divestiture condition is tailored appropriately to the potential harms of the proposed transaction.

The Applicants also criticize CAPCC's proposal that at least 30 MHz of spectrum be divested in each affected market.[18] The Applicants, claiming that CAPCC is trying to institute a new 85 MHz spectrum cap, miss the point. The amount of the proposed divestiture is not intended to bring the merged company's spectrum down to any specific level. Rather, it is intended to ensure that the entity that purchases the divested operations has a real opportunity to compete, with adequate spectrum for that purpose. Moreover, this element of the proposal

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[13] Joint Opposition at 13.

[14] CAPCC Petition at 5-6.

[15] *See*Joint Opposition at 18.

[16] *Id.* at 14.

[17] CAPCC Petition at 17; *see* Joint Opposition at 13-14.

affects only those markets where the combined entity would have at least 115 MHz but less than 125 MHz and, in some cases, would result in the merged entity having as much as 94 MHz of spectrum after divestiture.

C. It Is Reasonable to Adopt a Divestiture Condition That Includes a Right of First Negotiation for Socially Disadvantaged Businesses.

The Applicants dismiss CAPCC's demonstration of the benefits of granting a right of first negotiation for divested properties to socially disadvantaged businesses ("SDBs") by characterizing it as self-interested and an "unwarranted" intervention into the marketplace.[19] Both claims are incorrect.

First, CAPCC is not seeking any profit for itself and its members, other than the ability to benefit from fair competition in the wireless marketplace.[20] While this is a real and significant benefit, CAPCC is not asking for the right to negotiate for purchase of this spectrum for itself, or for any particular SDB. CAPCC made no such request in its petition, and there is no basis for the Applicants to make such a claim.

Second, granting a right of first negotiation to SDBs is entirely appropriate. As described in CAPCC's petition, the Commission and Congress long have had a goal of increasing diversity in ownership of telecommunications businesses, as expressed in Sections 257, 309(i) and 309(j) of the Communications Act, and it is well established that minorities face widespread discrimination in capital markets that makes it difficult for them to obtain the resources necessary to compete effectively in obtaining telecommunications authorizations.[21] While the Commission has made efforts to address these issues in the past, these efforts have not been as

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[18] CAPCC Petition at 17, 19; Joint Opposition at 40.

[19] Joint Opposition at 41.

[20] CAPCC Petition at 2-3.

effective as they could have been, and minority and SDB investment in telecommunications remains low.[22] The Applicants do not deny these facts; indeed, they do not even mention them at all.

Their focus, instead, is on the remedy of granting a right of first negotiation. While the Applicants suggest that grant of such preferences simply does not happen, the truth is that the Commission has recognized the public interest benefits of preferences as recently as this summer, in the *XM-Sirius Order*. In that order, the Commission granted the application for XM and Sirius to merge, and based that grant, in part, on the combined entity's commitment to make four percent of channel capacity available to entities under minority control.[23] The Commission specifically found that this commitment addressed concerns about diversity of programming following the merger and that it was "consistent with the Commission's stated goals to promote diversity[.]"[24] Consequently, this commitment was a significant factor in the Commission's conclusion that the public interest would be served by grant of the XM-Sirius merger application.

The same analysis holds true in this case. The increasing consolidation of the wireless industry is eliminating diversity among wireless providers. Conditioning grant of the Applications on divestiture of the operations described in CAPCC's petition and requiring that a right of first negotiation be granted to SDBs will be a step towards maintaining and expanding diversity in this industry. In fact, given its actions in the XM-Sirius proceeding, the Commission reasonably could insist that the divested operations be sold to an SDB. Requiring that the right

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[21] *Id.* at 13-14.

[22] *Id.* at 14-15.

[23] *Applications for Consent to Transfer of Control of Licenses, XM Satellite Radio Holdings, Inc. to Sirius Satellite Radio Inc.*, MB Docket No. 07-57, Memorandum Opinion and Order, FCC 08-178 (rel. Aug. 5, 2008), ¶¶ 134-35.

[24] *Id.*, ¶ 135.

of first negotiation be granted to SDBs is a much less intrusive action and is fully justified in this case.

III. Verizon Wireless Has Failed to Establish That Its Foreign Ownership Permits a Public Interest Determination Under Section 310(b)(4) of the Communications Act.

The Joint Opposition ignores CAPCC's showing that the Commission lacks any rational or legal basis to grant Verizon Wireless a public interest determination under Section 310(b) of the Communications Act. Thus, Verizon Wireless did not challenge CAPCC's demonstration that:

- Verizon Wireless's claim to a Section 310(b)(4) determination relies entirely on the presumption of citizenship from shareholder street address – a methodology that the Commission expressly and emphatically has rejected for any entity other than Verizon Wireless;[25]
- This "special" rule proffered by Verizon Wireless creates for Verizon Wireless an entirely different and far narrower definition of what constitutes "foreign ownership" under Section 310(b) than that which the Commission applies to every licensee and applicant other than Verizon Wireless;[26]
- There are no "special circumstances" peculiar to Verizon Wireless or this transaction that warrant giving Verizon Wireless its own special interpretation of Section 310(b) of the Communications Act, especially when the Commission enforces a far stricter standard against small businesses, socially disadvantaged entrepreneurs, and others who compete with Verizon Wireless;[27] and

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[25] CAPCC Petition at 23-24.

[26] *Id.* at 23-32.

[27] *Id.* at 26, 31.

- Approval of Verizon Wireless's Section 310(b)(4) showing cannot be reconciled with the Commission's recent decision in *América Móvil*[28] or with the *Diversity Order*,[29] which, respectively, rejected the use of shareholder addresses and denied far more modest relaxations of Section 310(b)(4) even for the priority goal of encouraging market entry by socially disadvantaged businesses and other small businesses.[30]

As CAPCC pointed out, if the Commission requires socially disadvantaged businesses and other Verizon Wireless competitors to analyze the citizenship of all of their investors through multiple ownership levels to establish compliance with Section 310(b), it must require Verizon Wireless to perform the same analysis with a statistically valid sample of the outstanding stock of its partners. If, on the other hand, the Commission instead permits Verizon Wireless categorically to presume the citizenship of its investors from street addresses without further analysis, it must permit socially disadvantaged businesses and Verizon Wireless competitors to do the same.

Without challenging any aspect of CAPCC's analysis, Verizon Wireless nevertheless insists it is entitled to rely upon the Commission's approval of its Section 310(b)(4) showing in the *Verizon Wireless-RCC Order*[31] and that whether others may rely on the same methodology is "not an appropriate issue" in this proceeding.[32] As demonstrated below, Verizon Wireless's

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[28] *In re Verizon Commc'ns Inc. and América Móvil, S.A. DE C.V.*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195, 6217 (Comm'n, rel. Mar. 26, 2007) [hereinafter "*América Móvil*"].

[29] *In re Promoting Diversification of Ownership in the Broad. Servs.*, MB Docket No. 07-294, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922 (rel. Mar. 5, 2008), *recon. pending* [hereinafter "*Diversity Order*"].

[30] CAPCC Petition at 24-27.

[31] *See Verizon Wireless-RCC Order*, ¶¶ 147-50.

[32] Joint Opposition at 90.

reliance on the *Verizon Wireless-RCC Order* is misplaced and the issue of whether the Commission applies a "special" Verizon Wireless rule or, instead, a policy of general applicability is decisive in assessing whether there is any rational basis consistent with the Communications Act for the Commission to approve Verizon Wireless's Section 310(b)(4) showing in this proceeding.

First, the *Verizon Wireless-RCC Order*, released during the pleading cycle of this proceeding, is subject to a petition for reconsideration addressing precisely the Section 310(b) issue raised by CAPCC – the use of a "special" Verizon Wireless-only interpretation of what constitutes "foreign ownership" under Section 310(b). No other Commission order addresses a Section 310(b)(4) determination for Verizon Wireless or its predecessors based on a presumption of citizenship from shareholder street addresses. Verizon Wireless urges the Commission to grant it a Section 310(b)(4) public interest determination based solely upon an order on reconsideration that fails to address the objections that CAPCC has raised and that the Joint Opposition has left unchallenged. Verizon Wireless has failed to provide the Commission with any affirmative reason to accept its Section 310(b) showing here or to rely on the *Verizon Wireless-RCC Order*.[33]

Second, a licensee subject to Section 310(b) has a continuing obligation to demonstrate its compliance, and a transferee has an obligation to demonstrate compliance with each transfer application.[34] In services subject to Section 310(b), the Commission considers an applicant's

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[33] Verizon Wireless's reliance upon *Verizon Wireless-RCC Order* is all the more curious here given that, as demonstrated above, Verizon Wireless denies the validity or applicability in this proceeding of the analysis of spectrum concentration and competition in the same *Verizon Wireless-RCC Order* on the supposed ground that the analysis is dated and does not take account of supposed facts of which Verizon Wireless asserts the Commission should have had knowledge at the time it issued the *Verizon Wireless-RCC Order*.

[34] *See, e.g.*, FCC Forms 314, 315, 316, and 603.

ownership qualifications with each application.[35] Consistent with that policy, the Commission in this proceeding expressly solicited public comment on Verizon Wireless's request for a Section 310(b)(4) public interest determination[36] – an action that, under Verizon Wireless's interpretation, would amount to a waste of resources and a public deception. Verizon Wireless's characterization of its showing as needing to cover only the new ALLTEL licenses is mere wordplay: Verizon Wireless's claim for a Section 310(b)(4) showing covering the ALLTEL licenses depends upon the Section 310(b)(4) status of the company as a whole, and Verizon Wireless's own exhibits address that question, albeit inadequately.[37]

The Commission, moreover, repeatedly has stressed that a licensee has a continuing obligation to comply with Section 310(b). Compliance status may change not only as interest holders and their status change with time, but also with changes in Commission interpretations of the law and its understanding of the circumstances relevant to the compliance of particular licensees. In *Fox Television Stations, Inc.*,[38] for example, the Commission found Fox in violation of the foreign ownership limitations of Section 310(b), notwithstanding that the Commission repeatedly had reviewed and approved Fox's Section 310(b) qualifications over the course of ten years and, as the Commission acknowledged, Fox was entitled during that period to rely upon reported Commission decisions under which it could reasonably have determined it was in full compliance.

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[35] *Id.*

[36] *See Notice* at 5.

[37] *See* Merger Applications, Description of Transaction, Public Interest Showing and Related Requests and Demonstrations, at 54-56 & n.123 (incorporating Letter from Nancy J. Victory, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated April 8, 2008, regarding assessment of shareholder citizenship by address as demonstration of continued eligibility for Section 310(b)(4) determination).

[38] 10 FCC Rcd 8452, 8456, 8483, 8486-88 (1995).

Third, Verizon Wireless radically misstates the question before the Commission when it argues that the question of whether other parties may avail themselves of the "special" Verizon Wireless interpretation of Section 310(b) "is not an appropriate issue for this proceeding."[39] There is no question about whether other parties may use the "special" Verizon Wireless rule. They cannot. The Commission repeatedly, even as recently as last year, expressly and emphatically rejected the use of shareholder street addresses as the basis for a Section 310(b) assessment[40] and, just a few months ago, denied far more modest relief for socially disadvantaged and other small business as "extraordinary relief" requiring at least a prior rule making proceeding.[41] Verizon Wireless alone may use this "special" rule because of its supposed "special circumstances," which, as CAPCC has demonstrated, do not withstand analysis.[42]

Contrary to Verizon Wireless's characterization, the issue before the Commission is whether, given that the interpretation of Section 310(b) on which Verizon Wireless's Section 310(b)(4) showing depends is a special and unprecedented interpretation of the statute that applies only to Verizon Wireless, the Commission has any lawful basis to grant the Section 310(b)(4) determination that Verizon Wireless seeks. It does not. As CAPCC demonstrated, the recognized alternative of analyzing a statistically valid sample of the public shares of the Verizon Wireless partners fully addresses any issues related to the number of outstanding shares of stock of Verizon Wireless's partners.[43] The sample size required for a statistically valid sample does

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[39] Joint Opposition at 90.

[40] *See América Móvil* at 6222-23.

[41] *See Diversity Order* at 5949.

[42] *See* CAPCC Petition at 29-30.

[43] *Id.* at 30.

not vary linearly with the size of the population to be sampled, so the raw number of shares outstanding does not justify special treatment for Verizon Wireless.[44] Certainly, Verizon Wireless cannot be distinguished from any other company whose investors have publicly traded stock.

Furthermore, as CAPCC pointed out, the proposed "special" Verizon Wireless interpretation of Section 310(b), which allows Verizon Wireless to make a conclusive presumption of citizenship from shareholder street address without regard to any other information in its possession or obtainable by it, uses an entirely different interpretation of what constitutes foreign ownership under Section 310(b) than the Commission applies to all other applicants. For Verizon Wireless, the subsidiary of a foreign corporation, a limited partnership or LLC with non-insulated foreign investors, or the sovereign wealth funds of non-WTO-member nations, so long as they cite a U.S. office street address, each would count not only as WTO-qualified ownership and control but as wholly U.S. investment and voting rights under Section 310(b). For socially disadvantaged businesses, small businesses that compete with Verizon Wireless, and all other applicants and licensees, those investments would be counted in their entirety, regardless of stated address, as foreign investment and, unless the underlying share ownership could be traced and proven, would count as non-WTO-qualified investment.[45] There is no information in the record of this proceeding or in the Verizon/RCC proceeding that conceivably could support such patent discrimination in favor of Verizon Wireless and against its competitors; and, in neither proceeding, has Verizon Wireless provided the Commission with

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[44] Political pollsters, for example, routinely sample populations of several hundred million at high levels of statistical accuracy for multiple characteristics in the population and in subsets of the population using random samples of a thousand individuals. *See, e.g.*, Zogby International, News Release, *Zogby Poll:* (Mar. 15, 2008), http://zogby.com/news/readnews.dbm?ID=1467.

[45] *See also* CAPCC Petition at 28-29, 31.

any support for applying such an extraordinarily inequitable policy, other than Verizon Wireless's bare assertion that conducting a sample survey would be "burdensome" to it.

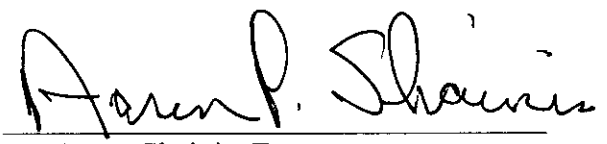
Accordingly, for the reasons set forth above and in its Petition to Deny, CAPCC submits that the Commission cannot lawfully grant the Section 310(b) public interest determination that Verizon Wireless seeks unless it either (1) obtains from Verizon Wireless a statistically valid sample survey establishing the citizenship of the shareholders of Verizon Wireless's constituent partners and demonstrating eligibility for a Section 310(b)(4) public interest determination or (2) converts the Verizon Wireless "special rule" into a rule of generally applicability by expressly holding that socially disadvantaged businesses and other licensees and applicants subject to Section 310(b) likewise may use Verizon Wireless's "shareholder address" standard as the sole test for determining the citizenship of their existing and potential investors under Section 310(b) for all services to which Section 310(b) applies.

IV. Conclusion

For all of these reasons, the Commission should deny the Merger Applications unless it conditions their grant as described above.

Respectfully submitted,

CHATHAM AVALON PARK COMMUNITY COUNCIL

By: 

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To the Office of Commissioner Jonathan Adelstein as follows (by hand delivery):
The Honorable Jonathan Adelstein
445 12th Street, S.W.
Washington, D.C. 20554

To the Office of Commissioner Deborah Tate as follows (by hand delivery):
The Honorable Deborah Taylor Tate
445 12th Street, S.W.
Washington, D.C. 20554

To the Office of Commissioner Robert McDowell as follows (by hand delivery):
The Honorable Robert McDowell
445 12th Street, S.W.
Washington, D.C. 20554

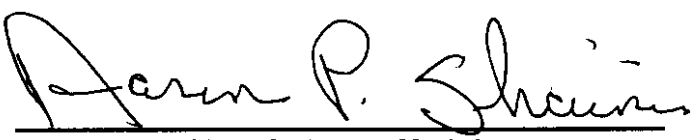
To the Office of the Chairman as follows (by hand delivery):
Aaron Goldberger
445 12th Street, S.W.
Washington, D.C. 20554

To the Office of Commissioner Michael Copps as follows (by hand delivery):
Bruce Gottlieb
445 12th Street, S.W.
Washington, D.C. 20554

To the Office of Commissioner Jonathan Adelstein as follows (by hand delivery):
Renee Roland Crittendon
445 12th Street, S.W.
Washington, D.C. 20554

To the Office of Commissioner Deborah Tate as follows (by hand delivery):
Wayne Leighton
445 12th Street, S.W.
Washington, D.C. 20554

To the Office of Commissioner Robert McDowell as follows (by hand delivery):
Angela Giancarlo
445 12th Street, S.W.
Washington, D.C. 20554



Signed: Aaron Shainis

August 26, 2008

Date