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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554  
Federal Communications Commission  
Office of the Secretary

In the Matter of	)	WT Docket No. 07-208
	)	
Applications of Cellco Partnership d/b/a	)	File Nos. 0003155487, et al., ITC-T/C-
Verizon Wireless and Rural Cellular	)	20070904-00358
Corporation	)	
	)	
For Consent To Transfer Control of Licenses,	)	
Authorizations, and Spectrum Manager Leases	)	
	)	
and	)	
	)	File Nos. ISP-PDR-20070928-00011,
Petitions for Declaratory Ruling that the	)	ISP-PDR-20070928-00012
Transaction Is Consistent with Section	)	
310(b)(4) of the Communications Act	)	

To: The Secretary  
Office of the Secretary  
Federal Communications Commission

**REPLY OF CHATHAM AVALON PARK COMMUNITY COUNCIL**

The Chatham Avalon Park Community Council ("CAPCC"), by its attorney, hereby submits this reply to the opposition of Verizon Wireless to CAPCC's petition for reconsideration in the above-referenced proceeding.<sup>1</sup>

Verizon Wireless devotes nearly its entire pleading to a procedural claim and does almost nothing to defend the Commission's application to Verizon Wireless of a special interpretation of what constitutes foreign ownership under Section 310(b) – an interpretation that the Commission, in a consistent line of written decisions, has rejected for everyone but Verizon

<sup>1</sup> Application of Cellco Partnership d/b/a Verizon Wireless & Rural Cellular Corp. for Consent to Transfer Control of Licenses, Authorizations, & Spectrum Manager Leases, WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-181 (rel. Aug. 1, 2008) (hereinafter "Verizon Wireless-RCC Order").

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Wireless. Verizon Wireless's priorities in its opposition indicate the weakness of its arguments on the merits, as does its effort to defend the Commission's decision by relying on arguments that contradict the Commission's stated rationale in the *Verizon Wireless-RCC* order. In any event, CAPCC has met the Commission's procedural requirements, and so it is necessary for the Commission to act on the merits of the petition.

**I. CAPCC Meets the Standing Requirements of Section 1.106(b).**

Verizon Wireless, in an attempt to avoid the merits of the petition, argues that CAPCC does not meet the standing requirements of Section 1.106(b) of the Commission's rules. In fact, CAPCC's petition is fully consistent with Section 1.106(b). Under Section 1.106(b), a party that did not participate in the initial portion of a proceeding and later files a petition for reconsideration is required to explain why it could not participate earlier. In addition, all parties must show why they have an interest in the proceeding. CAPCC has met both tests.

First, CAPCC, like any other association, can meet the basic standing test by showing that the interests of its members will be affected by Commission action.<sup>2</sup> As the petition explains, CAPCC's members are affected by consolidation in the wireless marketplace, which reduces choice and has the potential to increase prices. Additionally, because of the interest of both CAPCC and its members in maintaining and increasing diversity in ownership in communications businesses, the Commission's approval of the Verizon Wireless application – based on a type of foreign ownership showing that the Commission specifically disapproved for socially disadvantaged businesses (“SDBs”) – has a direct impact on CAPCC and its members because it reduces the ability of SDBs to compete with Verizon Wireless and other wireless behemoths.

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<sup>2</sup> See *Warth v. Seldin*, 422 U.S. 490, 511 (1975); *Office of Comm'n of United Church of Christ v. FCC*, 359 F.2d 994, 1005-06 (D.C. Cir. 1966).

Verizon Wireless argues that CAPCC does not have a cognizable interest because the RCC assets acquired in this transaction are not located in Chicago.<sup>3</sup> This misses the point. CAPCC members use wireless service across the country, including the places served by the RCC spectrum. Moreover, Verizon itself has asserted repeatedly, including in this proceeding, that wireless service is a *national* market.<sup>4</sup> While this is not true in every context, it plainly is correct that consolidation that affects a broad swath of the country has an impact on competition at the national level. Thus, it is inaccurate to claim that the impact of this transaction was limited to the places where RCC provided service.

The cases Verizon Wireless cites on the issue of injury are not relevant. In *Knox Broadcasting*, the association that sought reconsideration did not properly establish that its members would be injured, while CAPCC has done so in this case.<sup>5</sup> Similarly, the Commission rejected the petitions in *Friends of the Earth* because the parties failed to connect any specific Commission action to any claimed harm.<sup>6</sup> In this case, the Commission's grant of the application is connected directly to the harm of continuing consolidation and to the harm of reduced diversity of wireless ownership.

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<sup>3</sup> Verizon Wireless Opposition at 2-3 (filed Aug. 8, 2008) [hereinafter "Opposition"].

<sup>4</sup> See, e.g., Applications of Rural Cellular Corp. and Celco Partnership, File Nos. 0003155487 *et al.*, Description of Transaction, Public Interest Showing and Related Requests and Demonstrations, at 8 (describing availability of national service to RCC customers), 27 ("[T]he market for mobile telephone service is, in fact, increasingly national in scope. . . . [G]rowing national forces – such as the increasing reliance on national rate plans – argue more and more for redefining how the Commission judges the competitive effects of transactions.").

<sup>5</sup> *Knox Broadcasting, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 3337, 3338 (1997). CAPCC notes that its members' interests in addressing concentration in the wireless business and in promoting diversity were described in a declaration that was included in the attachment to the petition.

<sup>6</sup> *Friends of the Earth, Inc. & Forest Conservation Council, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 201 (CWD 2002). In that case, the petitioners made the same general

Second, CAPCC had ample justification for not participating in the initial proceeding, because it would have been unreasonable to expect CAPCC or any other party to anticipate that the Commission would adopt an approach to foreign ownership compliance that specifically had been rejected only a year before. No party has any reason to anticipate that the Commission will refuse to follow its own precedent, let alone longstanding, recently affirmed precedent. Verizon Wireless, while claiming that CAPCC was on notice because it knew that “the Commission would be reviewing Verizon Wireless’s foreign ownership” does not explain how CAPCC could have anticipated such an abrupt reversal.<sup>7</sup> Indeed, CAPCC’s situation is much like those parties that seek reconsideration because it is procedurally impossible to participate in an initial proceeding.<sup>8</sup> Like parties in such proceedings, CAPCC did not have a basis to ask for Commission action until the Commission took the step of granting the Verizon Wireless application and ignoring its own precedent.

The cases cited by Verizon Wireless do not change this analysis. None of them involved Commission action that was inconsistent with precedent. In *AT&T v. BTI*, the Commission noted that the specific result that was being protested was contemplated in the original notice for the proceeding, which is not the case here, where the Commission acted contrary to its existing precedent.<sup>9</sup> In *Regionet Wireless*, the Commission rejected a claim that meeting the requirements under Section 1.106(c)(2), which governs presentation of facts not previously before the Commission, was sufficient to meet standing requirements, but that is not the basis for

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allegations against hundreds of antenna registration filings, without any specific analysis of the deficiencies of those filings.

<sup>7</sup> Opposition at 5.

<sup>8</sup> See, e.g., *Robert Lewis Thompson*, Letter, 10 FCC Rcd 11555, 11556 (ASD 1995).

<sup>9</sup> *AT&T Corp. v. Bus. Telecom, Inc.*, Order on Reconsideration, 16 FCC Rcd 21750, 21755 (2001).

CAPCC's standing.<sup>10</sup> Rather, CAPCC depends on a change in circumstances – the Commission's adoption of a new, special Verizon Wireless-only test for foreign ownership that is contrary to precedent. Finally, in *Trans Video*, the Commission held that a party lacked standing for reconsideration because it had been granted the relief requested below, while in *Weblink Wireless* the party was seeking relief that could not be granted by the Commission.<sup>11</sup> Neither of those circumstances applies in this proceeding.

**II. The Commission Erred in Applying to Verizon Wireless a Substantially More Favorable Definition of What Constitutes Foreign Ownership Under Section 310(b) Than It Applies to All Other Licensees and Applicants.**

Verizon Wireless neither challenges nor even addresses CAPCC's demonstration that, by allowing Verizon Wireless to presume citizenship based on registered and beneficial owners' addresses of record, the Commission, without any adequate justification, applied an entirely different and far more liberal definition of what constitutes foreign ownership under Section 310(b) than it applies to small and socially disadvantaged businesses and other entities that compete with Verizon Wireless's media and telecommunications businesses. Approval of Verizon Wireless's Section 310(b)(4) showing cannot be reconciled with the Commission's recent decision in *América Móvil*<sup>12</sup> or with the *Diversity Order*,<sup>13</sup> which, respectively, rejected the use of shareholder addresses as a basis for assessing ownership under Section 310(b) and denied far more modest relaxations of Section 310(b)(4) even for the priority goal of

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<sup>10</sup> *Regionet Wireless License, LLC*, Memorandum Opinion and Order, 17 FCC Rcd 21269, 21272 (2002).

<sup>11</sup> *Trans Video Commc'ns, Inc.*, Order on Reconsideration, 19 FCC Rcd 18644, 18646 (2004); *Weblink Wireless, Inc.*, 17 FCC Rcd 24642, 24647 (WTB 2002).

<sup>12</sup> *In re Verizon Commc'ns Inc. and América Móvil, S.A. DE C.V.*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195, 6223 (2007) [hereinafter "*América Móvil*"].

encouraging market entry by socially disadvantaged businesses and other small businesses.<sup>14</sup>

Verizon Wireless also does not challenge CAPCC's showing that, contrary to the Commission's unsupported assertion in the *Verizon-RCC Order*, there in fact are no "special circumstances" warranting a different and more liberal interpretation of Section 310(b) for Verizon Wireless than for other licensees and applicants that the Commission regulates.<sup>15</sup> Rather than support the Commission's stated but flawed rationale for its decision, Verizon Wireless asserts that the *Verizon Wireless-RCC* decision is "consistent with Commission precedent." Thus, apparently realizing the weakness of the Commission's "special circumstances" rationale, Verizon Wireless now seeks to support the *Verizon Wireless-RCC Order* on grounds different from and in conflict with those relied upon by the Commission to support its decision.

Like the Commission's "special circumstances" rationale, Verizon Wireless's "consistent with Commission precedent" argument rests solely on Verizon Wireless's bare assertion and does not stand up to analysis. In *América Móvil* – the most recent in a line of Commission decisions rejecting presumptions from investor addresses – the Commission stated unequivocally: "[w]e decline, based on the record in this proceeding, to change the Commission's precedent by accepting street addresses of stockholders and banks as an indicator

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<sup>13</sup> *In re Promoting Diversification of Ownership in the Broad. Servs.*, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5949 (2008), *recon. pending* [hereinafter "*Diversity Order*"].

<sup>14</sup> CAPCC Petition, Exhibit 1, at 24-27 (filed Aug. 15, 2008).

<sup>15</sup> As CAPCC pointed out in its Petition, although the Commission states in the *Verizon-RCC Order* that it permitted Verizon Wireless to make an irrebuttable presumption of stockholder citizenship based on stockholder addresses because of supposed "special circumstances," there is no support in the decision or the record for the existence of such "special circumstances," other than Verizon Wireless's bare assertion that a survey would be "burdensome." The sample size required for a statistically valid sample does not vary linearly with the size of the population to be sampled, so the raw number of shares outstanding cannot justify special treatment for Verizon Wireless. See CAPCC Petition, Exhibit 1 at 29-30.

of the citizenship of beneficial owners.”<sup>16</sup> Verizon Wireless’s assertion that Commission precedent permits a presumption of citizenship from stockholder addresses not only contravenes *América Móvil*, but contradicts the Commission’s rationale for the *Verizon Wireless-RCC* decision itself. By premising its acceptance of address-based data on Verizon Wireless’s “special circumstances,” the Commission itself recognized that it could not square reliance upon stockholder address information with its holding in *América Móvil*.

Neither of the two decisions cited by Verizon Wireless<sup>17</sup> addresses in any respect the practice of presuming citizenship from stockholder addresses. Verizon Wireless can only point to an applicant’s filings that disclosed, without pointing out contrary precedent or pleading “special circumstances,” that it bases some of its showing on stockholder address information from third parties. Those two decisions neither address citizenship presumptions from stockholder addresses nor indicate in any way that the Commission intended to alter in any respect its express decision in *América Móvil* to reject the use of shareholder address information as an acceptable means to show stockholder citizenship.<sup>18</sup> To the contrary, the *MSV/ST* decision cites *América Móvil* with approval, which refutes any inference that the Commission intended to depart from that decision. Verizon Wireless in essence argues that the Commission somehow invalidated *sub silentio* a consistent, express line of Commission precedent because it overlooked an application defect that the applicant failed to point out. That position is untenable,

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<sup>16</sup> *América Móvil* at 6223.

<sup>17</sup> *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Commc’ns, Inc.*, Order and Declaratory Ruling, FCC 08-77 (rel. Mar. 7, 2008) [hereinafter “*MSV/ST*”]; *Motient Corp. and SkyTerra Commc’ns, Inc.*, 21 FCC Rcd 10198 (IB 2006).

<sup>18</sup> Contrary to the implication of Verizon Wireless’s reference, Opposition at 9 n.35, the Commission did not indicate that the “methodology” in one of those filings had been incorporated in its record for review. Rather, the Commission only included a reference to the letter by date in a list of many filings that had been made in the proceeding or incorporated as part of the record in the proceeding.

particularly in view of the Commission's express recognition that it in fact was departing from established precedent in the *Verizon-RCC Order* because of its supposed but non-existent "special circumstances." In short, presumption of citizenship from stockholder addresses of any sort is an approach that the Commission precedent expressly, definitively, and consistently has rejected for everyone but Verizon Wireless.

Verizon Wireless also fails in its attempt to show that its Section 310(b)(4) showing did something other than presume stockholder citizenship from stockholder addresses. Verizon Wireless says that, rather than rely upon stockholder addresses, it has "provided the Commission with 'aggregate information regarding the addresses of record of the beneficial owners' of Verizon and Vodafone stock,"<sup>19</sup> as if that changed the analysis in any material way. This is not an analysis of "beneficial ownership" that would suffice for anyone else. At best, Verizon Wireless's assertion means that, for some shares, Verizon Wireless got a third party to go a single step above pure nominee holders and then make a conclusive presumption of citizenship based on the address of the holder at that next level. That is an insignificant distinction. A "registered address" is nevertheless a street (or post office box) address, and the address supplied by a shareholder, as Verizon Wireless acknowledges, only discloses the location of the place or the agent to which the stockholder wants information sent; it has no necessary relationship with the Section 310(b) status of the stockholder under the interpretation of Section 310(b) that the Commission applies to everyone but Verizon Wireless.

In contrast to the liberal interpretation of Section 310(b) applied to Verizon Wireless, the Commission expressly requires, for all applicants other than Verizon Wireless, an analysis of "all the relevant ownership interests up the vertical ownership chain including 'even small

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<sup>19</sup> See Opposition at 8.

investments in publicly traded securities,”<sup>20</sup> not just a blind address-check a single level past a pure nominee. The special Section 310(b) interpretation for Verizon Wireless, however, allows Verizon Wireless to bypass the analysis that the Commission treats as critical to the Section 310(b) assessments of other applicants and that denies to those applicants sources of capital that Verizon Wireless may freely use.

Under its “special rule,” Verizon Wireless, unlike its less “special” competitors, need not concern itself with such matters as whether a stockholder is a U.S. corporation directly or indirectly owned or controlled by foreign parties or whether that stockholder is a limited partnership with non-insulated alien limited partners or even a foreign sovereign wealth fund, so long as the stockholder supplied a U.S. address. 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 have supplied a registered address in the United States, each would count not only as WTO-qualified ownership and control but as wholly U.S. investment and voting rights under Section 310(b).<sup>21</sup> For all other applicants and licensees, in contrast, those investments would count in their entirety, regardless of registered address, as foreign investment and, unless the underlying share ownership could be traced and proven, would count as non-WTO-qualified investment.<sup>22</sup> There is nothing in the record of this proceeding that conceivably could support such patent discrimination in favor of

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<sup>20</sup> *Foreign Ownership Guidelines*, 19 FCC Rcd 22612, 22625 (IB 2004).

<sup>21</sup> Sovereign wealth funds maintain offices outside their borders. For example, Brunei Investment Agency has an office in Paris, France; and Kuwait Investment Authority has an office in the United Kingdom; and China’s sovereign wealth fund, SAFE, maintains offices in Hong Kong, Singapore, London, and New York. See Sovereign Wealth Fund Institute, Fund List, <http://www.swfinstitute.org/aboutus.php>; Jamil Anderlini, “China Investment Arm Emerges from Shadows,” *Financial Times*, January 5, 2008, <http://www.ft.com/cms/s/0/fd0b7e6e-bb2f-11dc-9fbc-0000779fd2ac.html>.

<sup>22</sup> See *Foreign Ownership Guidelines*, 19 FCC Rcd at 22628-34.

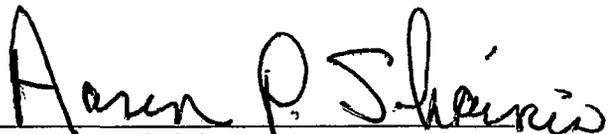
Verizon Wireless and against its competitors; and Verizon Wireless has provided the Commission with no support for applying such an extraordinarily inequitable policy, other than Verizon Wireless's bare assertion that conducting a sample survey and analyzing that sample under the interpretation of Section 310(b) that applies to everyone else would be "burdensome."

**III. Conclusion**

Accordingly, for the reasons set forth above in its Petition for Reconsideration, and its Petition to Deny, Petitioner submits that the Commission lacks a reasonable basis to adopt a special interpretation of Section 310(b) that applies only to Verizon Wireless. Consequently, the Commission therefore must either (1) obtain 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 based upon the multilevel analysis that the Commission requires from other applicants or (2) expressly acknowledge that socially disadvantaged businesses and other applicants and licensees likewise may use Verizon Wireless's registered address standard as the sole test for determining the citizenship of their potential investors under Section 310(b) for all services.

Respectfully submitted,

**CHATHAM AVALON PARK  
COMMUNITY COUNCIL**

By: 

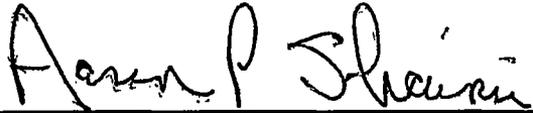
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September 9, 2008

## CERTIFICATE OF SERVICE

I, Aaron Shainis, do hereby certify that on this 9th day of September, 2008, copies of the foregoing Petition for Reconsideration were sent, as indicated below, either via hand-delivery or via first class United States mail, postage prepaid, to the following:

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	<p></p> <hr/> <p>Signed: Aaron Shainis</p> <hr/> <p>September 9, 2008</p> <hr/> <p>Date</p>