

**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)
Commission Licenses and Authorizations)
Pursuant to Sections 214 and 310(d) of the)
Communications Act)

**METROPCS COMMUNICATIONS, INC. AND NTELOS INC.
PETITION FOR LIMITED RECONSIDERATION**

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Dated: December 10, 2008

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	ii
I. Introduction and Background	2
II. By Taking Alltel Out of the Market, the Merger Results in the Unfair Loss of a Critical Upstream Supply Input Which Can Only be Remedied by Additional Conditions.....	7
III. A Seven-Year Obligation on the Part of Verizon to Honor the Alltel Roaming Agreements is Required to Remedy the Competitive Harms Caused by the Transaction.....	14
IV. On Reconsideration, the Commission Must Require the Merged Entity to Offer Data Roaming to the Extent and on the Same Terms and Conditions as Existing Alltel Contracts Offered to Third Parties in Order to Prevent Clear and Present Harm to Competition.	18
V. The Additional Roaming Conditions Requested by Petitioners are an Appropriate and Targeted Method to Address the Competitive Harms that Will Result from the Merger.....	22
VI. Conclusion	25

SUMMARY

MetroPCS Communications, Inc. (“MetroPCS”) and NTELOS Inc. (“NTELOS” and together with MetroPCS, “Petitioners”) seek partial reconsideration of the Commission’s November 10, 2008 *Merger Order* approving the merger of Cellco Partnership d/b/a Verizon Wireless (“Verizon”), Atlantis Holdings LLC, and ALLTEL Corporation (“Alltel”) with certain conditions. Petitioners submit that the conditions set forth in the *Merger Order* are insufficient to mitigate the anti-competitive harms that will result from the Transaction. Petitioners therefore respectfully request that the Commission modify the *Merger Order* in two additional narrowly-tailored merger-specific respects:

- (1) **Extend the time period when Verizon must honor existing Alltel roaming agreements with each regional, small and/or rural carrier throughout the combined service area from four to the longer of seven years or the term of either agreement that a party may have with Verizon or Alltel.**

Alltel’s presence in the marketplace has had a significant effect on maintaining reasonable roaming rates and conditions for CDMA carriers, primarily due to Alltel’s significant coverage of large parts of the country as well as Alltel’s market driven incentives to engage in favorable reciprocal roaming agreements with small, rural and regional carriers to cover roaming by its own customers outside of its service area. This has not been the case with Verizon, whose roaming rates are significantly higher (and narrower in terms of the service they cover) than Alltel’s, and any incentives Verizon may now have will vanish with the consummation of the Transaction. Because of the virtual nationwide coverage of Verizon resulting from the Transaction, Verizon will now have even less incentive to offer reasonable roaming rates and conditions to other carriers. Since it will have virtually ubiquitous nationwide coverage, Verizon’s incentive is instead to deny roaming altogether or offer roaming at excessive rates so as to impede the ability of small, regional and rural carriers to offer nationwide service through roaming agreements, thereby eliminating their ability to compete with Verizon for customers who seek nationwide roaming plans. This competitive harm is a direct result of the Transaction.

The four-year extension of existing Alltel roaming agreements agreed to by Verizon as a condition of the merger is simply not sufficient to protect competitive carriers, and competition itself, from the anti-competitive effects of the merger. Certainly, the remedy of extending the more competitive Alltel agreements is important to preserving the competition that it offered in the roaming market, but an extension is only delaying the competitive harm unless the time period extends until some other event occurs that will eliminate entirely the need for the remedy. Otherwise, the condition is merely a “bridge to nowhere” and merely postpones the time when Verizon can assert its additional market power to harm its competitors.

Fortunately, new technology is on the horizon that will mitigate the harms of the Transaction by enabling CDMA carriers such as MetroPCS and NTELOS to roam on what are now incompatible networks. The result will be the re-injection of competitive alternatives to replace Alltel. However, that technology, Long Term Evolution (“LTE”), will not be sufficiently deployed within the four years that Verizon has agreed to continue the Alltel agreements. Verizon, AT&T, T-Mobile and other carriers do not expect to commence the rollout of LTE for at least two years. Given the experience of 3G roll-outs, which have already taken upwards of

five years, and are still not complete, it would be unreasonable to expect LTE to be rolled out nationwide by all of the carriers in under five years from the time that they commence the deployment of LTE. Since substantial LTE rollout is not reasonably foreseeable prior to seven years from now, a minimum seven-year period to honor the Alltel roaming agreements is clearly the minimum needed in order to prevent the competitive harm that will otherwise be incurred as a result of the Transaction.

- (2) **For seven years from the date the Transaction closes, require that Verizon offer automatic roaming for data (including non-interconnected) services and features, including services that have been classified as information services, to the extent, and on the same terms and conditions, that Verizon/Alltel offers such services and features to any carrier.**

Approval of the Transaction should also be clearly conditioned upon a requirement that the merged entity offer data roaming to the extent and on the terms of existing Alltel contracts, even if a carrier did not have this service as part of its roaming agreement. The record shows that, unlike Verizon, Alltel has offered automatic data roaming available to other carriers. For example, NTELOS' agreement with Alltel includes 1xRTT/EVDO automatic data roaming. It clearly would be discriminatory and would harm competition for Verizon to deny automatic data roaming to other carriers during the term of those contracts, as extended by the *Merger Order*. There is no reason to believe that, absent the Transaction, Alltel would have refused data roaming if requested by such other carriers – indeed, MetroPCS was offered data roaming by Alltel but did not have the immediate capability to take advantage of that service at the time of its agreement, but now can and would take advantage of such a service..

Therefore, the Commission must require Verizon to offer data roaming to the extent and on the terms of existing Alltel contracts offered to third parties in order to prevent such harm to competition. Because Alltel had been offering data roaming, and Verizon currently refuses to offer data roaming, the merger will result in a denial of data roaming to carriers who, absent the Transaction, would have had data roaming available from Alltel. Otherwise, the Transaction will result in a game of regulatory “musical chairs” where only those carriers who have data roaming will have it in the future. This requested condition is narrowly-tailored and merger-specific to address the competitive harm resulting from the merger and merely preserves competition for data services as it already exists today and would continue to exist but for the merger.

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**METROPCS COMMUNICATIONS, INC. AND NTELOS INC.
PETITION FOR LIMITED RECONSIDERATION**

MetroPCS Communications, Inc. (“MetroPCS”) and NTELOS Inc. (“NTELOS” and, together with MetroPCS, “Petitioners”),¹ by their undersigned counsel and pursuant to Section 1.106 of the Commission’s rules, hereby submits their petition for limited reconsideration of the Commission’s November 10, 2008, Memorandum Opinion and Order and Declaratory Ruling granting the captioned application of Cellco Partnership d/b/a Verizon Wireless (“Verizon”), Atlantis Holdings LLC (“Atlantis”) and ALLTEL Corporation (“Alltel”) (Verizon, Atlantis and Alltel, collectively, the “Applicants”) for the transfer of control of Alltel and its subsidiaries to Verizon (the “Transaction”).² MetroPCS and NTELOS respectfully show the following:

¹ For purposes of this Petition, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its Commission-licensed subsidiaries and “NTELOS” refers to NTELOS Inc. and its Commission-licensed subsidiaries.

² *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-258, released November 10, 2008 (“*Merger Order*”).

I. Introduction and Background

In its *Merger Order*, the Commission granted a series of applications filed by Applicants for Commission consent to the transfer of control to Verizon of licenses, authorizations, and spectrum manager and *de facto* transfer leasing arrangements held by Alltel and its subsidiaries. Because of the anticompetitive harms resulting from the Transaction, various parties, including MetroPCS and NTELOS, sought a number of narrowly-crafted conditions on the grant of consent for the purpose of mitigating the anti-competitive harms resulting from the Transaction. Although a number of different conditions were proposed, most centered on the anti-competitive effects that the Transaction would have on the automatic roaming market

In particular, MetroPCS and NTELOS, filed a timely joint Petition to Condition Consent or Deny Applications on August 11, 2008 (“Joint Petition”) and a joint Reply to Joint Opposition to Petitions to Deny and Comments on August 26, 2008 (“Joint Reply”) demonstrating the anti-competitive harms resulting from the Transaction, and proposing certain narrowly-tailored and merger-specific conditions to alleviate those anti-competitive harms. Specifically, MetroPCS and NTELOS requested that the Commission condition its consent for the Transaction on certain specific obligations with respect to automatic roaming and the divestitures of licenses.

Subsequently, MetroPCS and NTELOS, in cooperation with a broad cross-section of regional, small and/or rural wireless carriers and their trade groups who would be adversely affected by the removal of Alltel as a supplier of automatic roaming services,³ advocated a consensus proposal that set forth even narrower merger-specific conditions that, if adopted, would have enabled the Commission to conclude that the merger would serve the public interest:

³ The group of carriers and trade groups that created the consensus proposal included MetroPCS, NTELOS, Leap Wireless International, Inc. (“LEAP”), the Rural Telecommunications Group, Inc. (“RTG”), and the Rural Cellular Association (“RCA”) (together the “Industry Consensus Group”). See Ex Parte Letter submitted on behalf of the Industry Consensus Group on October 28, 2008 (“*Industry Consensus Group Ex Parte Letter*”).

- Extend the proposed duration of the extension of the Alltel and Verizon agreements beyond the four years offered by Verizon to the longer of seven years (based on LTE timing) or the term of any existing agreement between the parties.⁴
- Confirm that the Verizon Wireless roaming commitments apply to all non-national carriers (*i.e.*, all carriers other than AT&T, Sprint Nextel and T-Mobile).
- Confirm that once one of the two roaming agreements (Alltel or Verizon Wireless) is selected (“Selected Agreement”), it applies to all roaming traffic of the requesting carrier throughout all of the combined company’s service area, and not just to roaming traffic in the areas where Alltel and Verizon Wireless had overlapping service.
- Confirm that “reasonableness and nondiscrimination” obligations will continue to apply to any Selected Agreements; in other words, a carrier will not be barred from claiming that a Selected Agreement is unreasonable or discriminatory.
- Confirm that any Selected Agreement shall be treated under Sections 201 and 202 as a voluntary agreement of the combined company.
- Permit carriers to expand their Alltel or Verizon agreement to services not covered by those agreements but that Alltel or Verizon has made available to other carriers.
- Require that Alltel’s GSM networks will be supported for seven years at the same technical and operational standards as Verizon maintains other network facilities and services in the same market.
- Provide that any dispute arising under these roaming conditions be resolved by baseball style arbitration under the auspices of the FCC, patterned after the Newscorp/DIRECTV merger conditions, *General Motors Corp. and Hughes Elecs. Corp. for Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd 473, at Appendix F (2003).

Notably, many of the requested obligations sought to fully articulate the precise nature and scope of roaming conditions already agreed to by Verizon. For example, Verizon had offered in a series of filings to make certain roaming concessions to “each regional, small and/or

⁴ Verizon initially offered to extend the agreements for two years, and following the submission of comments from multiple parties demonstrating that two years would be wholly insufficient to protect competition, increased that offer to four years. *See* Letter from John T. Scott, III, Vice President & Deputy General Counsel Regulatory Law, Verizon Wireless to Marlene H. Dortch, Secretary, Federal Communications Commission, November 3, 2008 (“*Verizon November 3 Ex Parte*”).

regional carrier.” The Industry Consensus Petitioners sought to clarify that this phrase encompasses all carriers other than AT&T, Sprint Nextel, and T-Mobile.

MetroPCS and NTELOS are appreciative of and applaud the Commission’s efforts to address certain of the anti-competitive harms caused by the Transaction. Although Verizon volunteered certain obligations which the Commission accepted, the *Merger Order* did not provide the complete relief requested by the Industry Consensus Petitioners and required by the public interest. Specifically, the Commission did not go far enough when it granted its consent to the Transaction subject only to the following conditions that were voluntarily agreed to by Verizon:

- Honoring existing Alltel roaming agreements with each regional, small and/or rural carrier for a period of at least four years;
- Affording each regional, small and/or rural carrier that has roaming agreements with both Alltel and Verizon the option of selecting either agreement to govern all roaming traffic between the carrier and Verizon; and
- Affirming that when a CMRS carrier receives a reasonable request for roaming, pursuant to Sections 201 and 202 of the Communications Act of 1934, as amended (the “Act”), 47 C.F.R. §§ 201 and 202, the carrier is required to provide roaming on reasonable and non-discriminatory terms and conditions, and that if a requesting carrier believes that particular acts or practices relating to roaming are unjust or unreasonable, the carrier may file a complaint with the Commission pursuant to Section 208 of the Act, 47 C.F.R. § 208.⁵

For the reasons set forth below, MetroPCS and NTELOS submit that the conditions volunteered by Verizon and imposed by the Commission are insufficient to mitigate all of the significant competitive harms relating to the provision of automatic roaming service that are likely to result from the Transaction. Commissioner Copps summed up the true state of affairs in his partial dissent as follows:

⁵ *Merger Order* at ¶ 178; see also *Merger Order*, Statement of Commissioner Robert M. McDowell Approving in Part, Concurring in Part, wherein Commissioner McDowell acknowledges that the roaming conditions adopted in the *Merger Order* are merger-specific. Of course, the last bulleted item is not a “condition” at all, but is a mere restatement of Verizon’s pre-existing statutory duty and was not volunteered by Verizon.

Today's merger is also seriously bad news for smaller carriers who rely on roaming – and their customers. The reason is that the new, merged network will be the only game in town when it comes to roaming in many regions of the country. Smaller carriers that rely on roaming contracts to provide nationwide service will see a critical partner eliminated in rural areas. This development may even put some smaller carriers out of business – thus further consolidating the wireless marketplace. The creation of an ever more dominant carrier will also have ripple effects in many other parts of the wireless marketplace – tipping the balance even more towards the network operator when it comes to dealing with handset manufacturers, content providers, application designers and the many other companies that will be forced to ask for “permission to innovate.”⁶

Similarly, Commissioner Adelstein concluded in his partial dissent that the conditions adopted in the *Merger Order* would be insufficient to keep the merger from seriously harming competition:

I am very concerned that the merger of these two entities will reduce competition in the wireless marketplace. I can not fully support this merger in the absence of reasonable conditions. Competition is essential to keeping consumer costs down and driving innovation. I am particularly concerned that a decrease in competition in this instance may have a dramatic effect on the roaming market, and hence on consumers of competing, and smaller, wireless service operators. With the loss of the largest regional CDMA carrier resulting from this transaction, and with only two available CDMA carriers nationwide, there is a real concern that smaller carriers may be unable to negotiate reasonable and nondiscriminatory roaming terms with national carriers. Not only does this threaten consistency in service across the country, with fewer carriers in each market, but roaming rates can easily rise and the costs may ultimately be passed on to consumers. This will undercut the remaining competitive carriers, potentially resulting in reduced competition in the local and national retail market. I would have preferred that the majority adopt transaction specific, pro-competitive conditions to address these very legitimate and specific competitive harms.⁷

The statements of Commissioners Copps and Adelstein accurately describe the inadequacy of the automatic roaming conditions found in the *Merger Order*.

⁶ *Merger Order*, Statement of Commissioner Michael J. Copps Concurring in Part, Dissenting in Part (“*Copps Statement*”).

⁷ *Merger Order*, Statement of Commissioner Jonathan S. Adelstein Concurring in Part, Dissenting in Part (“*Adelstein Statement*”).

The imposed conditions plainly do not go far enough in two distinct areas. First, although crafted to get the industry through the evolution to a new air interface standard which many believe will be Long Term Evolution (“LTE”) that would allow for additional competition, the current conditions do not take into account that such transition will most likely take longer than four years to occur and the condition is therefore a “bridge to nowhere.” Second, the conditions do not deal with the possibility that Verizon/Alltel may be offering services to certain carriers and not others – specifically EVDO roaming, and nothing in the *Merger Order* necessarily requires Verizon to do so. As a result, Petitioners request that the Commission reconsider its grant of consent to the transfer of control and modify the conditions as follows:

- Extend the time period when Verizon must honor existing Alltel roaming agreements with each regional, small and/or rural carrier throughout the combined service area from four to the longer of seven years or the term of either agreement that a party may have with Verizon or Alltel; and
- For seven years from the date the Transaction closes, require that Verizon offer automatic roaming for data (including non-interconnected) services and features, including services that have been classified as information services, to the extent, and on the same terms and conditions, that Verizon/Alltel offers such services and features to any carrier.

As explained below, the Transaction will uniquely and seriously harm competition, and the conditions required by the *Merger Order* do not go far enough to remedy those harms. First, the current conditions simply will not be in place for long enough to lead to a competitive market for automatic roaming.⁸ Second, the conditions may not include services which may be included in some, but not all, agreements and, unless expanded as set forth herein, will merely freeze in place inequities that would have been remedied over time if Alltel had remained in the market. The additional conditions requested by Petitioners herein are narrowly tailored and merger-specific so

⁸ Further, the condition does not take into account that either Verizon or Alltel may have a longer term than the other for their respective existing agreements. The proposed condition should allow a carrier to get the longer term of the two agreements, even if the carrier chooses to adopt the other agreement.

as to mitigate the specific harms caused by the fact that, as a result of the Transaction, Verizon is “taking out” Alltel as a CDMA roaming partner in the market. MetroPCS, NTELOS, and other CDMA carriers will, absent the additional conditions requested herein, lose their ability to effectively compete in a fair marketplace, resulting in market failure and substantially reduced competition and competitive choice in a number of markets.

Further, the brief extension of the condition period from four to seven years for all conditions is just long enough for a robust competitive market to substantially deploy automatic roaming based on LTE. The proposed additional conditions are merger-specific and are narrowly tailored to address only the specific harm caused by the Transaction. They do not single out Applicants for any unfair regulatory treatment. Further, as demonstrated in greater detail below, the requested additional conditions are essential to prevent market failure and preserve the wireless competitive marketplace after the Transaction closes. Petitioners urge the Commission to adopt these changes and additional conditions, and the public interest demands it.

II. By Taking Alltel Out of the Market, the Merger Results in the Unfair Loss of a Critical Upstream Supply Input Which Can Only be Remedied by Additional Conditions.

In the *Merger Order*, the Commission stated:

With regard to any additional roaming concerns raised in the record or in the *ex parte* letter filed by MetroPCS and other commenters, . . . we find that the package of divestitures on which we are conditioning our approval of this transaction, along with the roaming conditions described above, [is] sufficient to prevent the significant competitive harm that this transaction would likely cause in certain geographic markets. Based on this finding that the divestitures, as well as Verizon Wireless’ roaming related commitments, will protect competition at the retail level in those geographic markets, we conclude that this transaction will not alter competitive market conditions to harm consumers of mobile telephony/broadband services. . . . Accordingly, we decline to condition our

approval of the transaction on any additional special requirements relating to roaming rates or arrangements. . . .⁹

However, as discussed in the Joint Petition and the Joint Reply, the Transaction will eliminate an important source for a vital input to the local retail services market. Alltel – unlike Verizon – has offered competitive terms and rates for voice and data automatic roaming services and has offered roaming in places, and for services, in which Verizon has refused roaming (or sought to impose draconian concessions in exchange). As a result, Alltel’s presence in the market has provided critical competition for this important input, as well as a competitive yardstick against which to measure the reasonableness of Verizon’s rates.¹⁰ The closing of the Transaction will eliminate the important balance provided by Alltel.

Roaming service is a critical supply input needed by all regional and local carriers in order to offer competitive local retail service in their respective markets – and in the long run to preserve their viability as a competitive force. Because small, rural and regional carriers compete with the nationwide carriers, when a prospective customer is in the market to subscribe for local retail service, the customer considers not only the rates for local service, but the rates that the customer must pay when traveling to other areas. Since Verizon and others have national bundled rate plans for voice and data services, local competitors must offer similar national roaming plans for voice and data services in order to be competitive.

Simply put, if small, rural and regional carriers, such as MetroPCS or NTELOS, cannot offer competitive rates for voice and data roaming, their local retail service packages will not be competitive to a significant segment of the market. As a result, not only will the non-national

⁹ *Merger Order* at ¶ 179 (footnotes omitted).

¹⁰ As discussed herein, the complementary nature of Alltel’s footprint as a regional carrier means that its elimination will cause competitive harm that is disproportionately greater than might be expected from a mere consideration of Alltel’s size or retail market share.

carriers have difficulty signing up new customers, over time they may also lose existing customers to nationwide carriers offering better roaming rates. In other words, losing Alltel as an upstream supplier of a critical supply input will result in market failure because it will harm the ability of small, rural and regional carriers, such as MetroPCS and NTELOS, to compete effectively in certain segments of the local retail marketplace. These carriers will be marginalized as a competitive force in the larger retail market, and any meaningful measure of market concentration would ultimately show a retail market dominated by national competitors with small, rural regional, and specialized players shoved to the edges.¹¹

The above analysis is not merely a hypothetical academic exercise. It is very real, as shown by facts attested to by Verizon's and Alltel's own expert witnesses. In the Reply Declaration of Dennis Carlton, Allan Champine and Hal Sider ("Reply Declaration") submitted by Verizon and Alltel,¹² their witnesses unequivocally state that "roaming prices per minute have fallen from roughly \$0.80 per minute in 1995 to roughly \$0.05 per minute in 2007."¹³ Although MetroPCS and NTELOS are unable to reveal the specific roaming rates that they are paying to Verizon because of non-disclosure provisions in their agreements with Verizon, they can state that the rates they are charged by Verizon are significant *multiples* of \$0.05 per minute – and are also much higher than the (also confidential) rates MetroPCS and NTELOS pay to Alltel. Further, once the four-year period expires, the Commission should expect that Verizon will once again exert its near-monopoly power to drive up competitors' costs. This is a particular risk in the absence of the migration by the four national carriers to a new air interface, such as LTE, that would allow small, rural and regional carriers to purchase roaming from all national carriers – not

¹¹ Calculated against this ultimate state of affairs rather than on a static basis, the HHI index would be far higher than it would be in a competitive marketplace.

¹² Joint Opposition, at Attachment 1.

¹³ Joint Opposition at 29, ¶ 59; *see also id.* at 30, Figure 1.

just CDMA carriers. Moreover, the record reflects that Alltel has been willing to offer data roaming services to other carriers – something that Verizon has steadfastly refused to do and, absent the requested condition, will continue to refuse to do.

If the rates Petitioners are paying are typical of Verizon’s roaming rates (and if they are not, then Verizon is engaged in unlawful discrimination), then, absent any real competition, it is clear that Verizon’s rates will balloon upward in four years, resulting in competitive harm at the downstream level for retail wireless services. But the analysis does not stop there. Applicants’ witnesses also stated in their Reply Declaration that Verizon and Alltel had been *net purchasers* of roaming minutes, and that post-transaction Verizon will be a *net seller* of roaming minutes. This change from *net purchasers* to *net seller* will be a direct result of the Transaction, and will eliminate *any* remaining incentive for Verizon to lower its roaming rates or to offer data roaming to other carriers.

Even that is not all. The Reply Declaration also stated that “roaming accounts for a declining share of all wireless minutes and revenues.”¹⁴ Specifically, the roaming share of total revenues for all U.S. carriers has dropped from approximately 13-14% in 1995 to approximately 3% in 2007. Petitioners expect this trend to continue. This means that Verizon will have no incentive to compete for roaming revenues as soon as the consummation of the Transaction, let alone after four years. Rather, its much stronger incentive will be to keep roaming rates high, thereby depriving small, rural and regional carriers of the critical supply input needed to compete effectively at the local retail level, in the end smothering competitors and capturing their retail subscribers for itself.¹⁵

¹⁴ Joint Opposition at 30, ¶ 60.

¹⁵ On the other hand, if the rates that Petitioners are paying Verizon for roaming are not typical of Verizon’s roaming rates, and Verizon’s typical roaming rate approximates the typical industry roaming rate of \$0.05

The roaming rates charged to Petitioners by Verizon also are anticompetitive (and cannot be deemed to be just and reasonable), because they are multiples of rates paid by retail subscribers under many Verizon rate plans. Since there are no customer service, acquisition, handset, and individualized billing and collection costs associated with roaming service, the roaming rates must be far in excess of any just and reasonable rates. And since it is more expensive for Verizon to provide a retail minute than a roaming minute due to costs of sales, billing, and the like, there is no way that Verizon can justify wholesale charges to a competing carrier for roaming minutes that are many times what Verizon charges its customers for retail minutes; instead, it is clear that Verizon imposes such exorbitant charges solely to place its competitors at an unfair competitive disadvantage and not on any cost differential. Further, absent the promise of new competition for LTE, Verizon will undoubtedly be able to extract these supra competitive rents.

Against all the evidence, the *Merger Order* states that “competition in the retail market is sufficient to protect consumers against potential harm arising from intercarrier roaming arrangements and practices.”¹⁶ The fallacy in the *Merger Order*’s conclusion is that there is no causal relationship between retail rates and roaming rates, either empirically or theoretically. Empirically, the evidence clearly shows that the roaming rates charged by Verizon to Petitioners

per minute, then Verizon is unreasonably discriminating against Petitioners by charging them multiples of \$0.05 per minute. There is reason to believe that this may be the case. In their Reply Declaration, Applicants’ witnesses stated: “Sprint . . . recently reached an agreement with Verizon Wireless that would extend the (low) rates in its current ALLTEL agreement through [redacted]. The agreement also lowers rates, provides volume discounts and extends the contract in Verizon Wireless served areas.” Joint Opposition at 35, ¶ 67. Although it is not clear what “low” means, it is reasonable to assume from the context that “low” means \$0.05 per minute or less. In other words, there is *prima facie* evidence that Petitioners must pay Verizon a multiple of what Sprint will be paying Verizon. Since the only other benchmark – Alltel – is disappearing from the market, the roaming conditions found in the *Merger Order* will not be an adequate check on whether Verizon charges just and reasonable rates. Therefore, additional conditions are necessary and appropriate for this reason as well.

¹⁶ *Merger Order* at ¶ 179.

are multiples of Verizon's retail rates, exactly the opposite of what the Commission's analysis would lead one to expect.¹⁷

And this, conceptually, is not a surprise, for Verizon knows that non-nationwide carriers like MetroPCS and NTELOS need reasonable wholesale roaming rates in order to fashion rate plans that are attractive to consumers. Retail competitive pressures incent Verizon to charge *higher*, not lower, wholesale roaming rates, because retail customers are more likely to switch to Verizon if Verizon's competitors are hamstrung from charging competitive roaming rates by having to pay excessive wholesale charges to Verizon. Ultimately, by cutting off its competitors from reasonable roaming arrangements, Verizon can weaken or eliminate small, rural and regional carriers from the local marketplace.

Unlike Alltel, Verizon has no incentive to enter into fair roaming agreements with small, rural and regional carriers. Although Alltel provides service over a substantial geographic area, there still are substantial portions of the United States population that it does not serve. Consequently, Alltel has the natural incentive to seek fair reciprocal roaming agreements with small, rural and regional carriers to augment its roaming footprint. Indeed, historically carriers needed each other to provide service in areas they did not cover (*e.g.*, reciprocal benefits), so carriers such as Alltel had the natural incentive to engage in market based roaming agreements. Alltel's role in the market provided a check (albeit limited and imperfect) on Verizon's ability to completely capture its competitors' customers by anticompetitive tactics.

Removing Alltel as a competitor not only removes a significant upstream supplier of an important input, but also frees Verizon from one of its last constraints on engaging in this type of anticompetitive behavior. Both the removal of Alltel as an upstream supplier and Verizon's

¹⁷ Alltel's rates, though lower than Verizon's, are also higher than would appear from the evidence submitted by Verizon.

increased ability and incentive to engage in anticompetitive behavior are merger-specific.¹⁸ This situation will not be remedied until at least three national wireless carriers migrate to LTE for a significant portion of their networks. Thus, the narrowly-tailored conditions sought by Petitioners are essential to mitigate against the unfair competitive harm caused by such behavior.

Several recent developments, including this merger, have resulted in critical changes in the wireless market, especially as they relate to CDMA roaming, that further empower Verizon. For example, even before the proposed Alltel merger, Verizon's prior Commission-approved acquisitions allowed it to significantly expand its geographic footprint, and significantly reduce its need to enter into fair reciprocal roaming agreements. Further, Verizon has acquired substantial amounts of nationwide spectrum which now allows it to offer service anywhere in the United States. For example, Verizon now holds well over 22 MHz of 700 MHz spectrum nationwide and includes in many markets one or more 800 MHz cellular licenses as well as PCS and AWS spectrum. Finally, as a result of this Transaction, Verizon will provide coverage to well over 94% of the United States population.¹⁹ The dramatic change in concentration in the short time since the *2007 Roaming Order*,²⁰ has drastically reduced Verizon's incentives to enter into reciprocal fair roaming agreements. In contrast, Alltel did not acquire additional spectrum in the 700 MHz auction and has not acquired other significant properties since the *2007 Roaming Order*.

¹⁸ As a practical matter, with the elimination of Alltel, the number of roaming suppliers over most of the nation will be reduced to a duopoly. Going from three competitors to two will have a dramatic effect on the rates for roaming services – especially if one of the duopolists has a very favorable roaming agreement, thus precluding market forces from benefiting parties seeking a new or modified roaming agreement from one of the duopolists.

¹⁹ Pre-merger, Verizon already provides coverage to 94% of the U.S. population. Reply Declaration at 27, ¶ 56. Since one of the main purposes of the merger is to increase Verizon's coverage, and there are a number of counties that had been covered by Alltel but not by Verizon, it is clear that Verizon's coverage will increase substantially above 94% of the U.S. population.

²⁰ *In re Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 (2007).

Accordingly, Alltel continued to have the powerful market-based incentives to enter into fair reciprocal roaming agreements, and in fact it did so.

Now that Alltel is being taken out of the market, there no longer is even the limited assurance that previously existed that market forces will lead to just and reasonable rates for roaming. And if Verizon's prior behavior is any guide, Verizon will not enter into just and reasonable roaming agreements in the future.²¹ Because carriers in the past did not have nationwide service footprints, and therefore had to enter into reciprocal roaming agreements in order to serve areas that they could not otherwise serve, the Commission historically was able to adopt a hands-off, market-based policy for roaming arrangements content that the market could be trusted to foster rates that were just and reasonable. Following the consummation of the Transaction and the consequent culmination of Verizon's nationwide coverage plans, Verizon has none of these incentives. The additional conditions proposed by Petitioners are necessary to prevent clear and present harm to competition. Further, since small, rural and regional carriers using CDMA have to rely on Verizon for roaming until LTE is fully deployed, Verizon will have the ability to engage in anti-competitive activities and extract supra competitive rents.

III. A Seven-Year Obligation on the Part of Verizon to Honor the Alltel Roaming Agreements is Required to Remedy the Competitive Harms Caused by the Transaction.

Apparently realizing that the removal of Alltel and its more competitive roaming agreements from the competitive marketplace gave rise to serious competitive concerns, Verizon voluntarily offered to extend the Alltel contracts for a period of at first two years. Then, after seeing that the MetroPCS/NTELOS Joint Petition and other comments in the proceeding

²¹ Obviously a party's prior actions are the best gauge of what a party will likely do in the future. Since Verizon has already demonstrated that it intends only to offer rates that are unreasonable, the reduction in competition will only exacerbate this behavior, not remedy it.

persuasively demonstrated the need for a longer period, Verizon expanded its offer to four years from the consummation of the Transaction.

Some of the Commissioners commented that four years is insufficient to ensure that the industry will have deployed the LTE technology that will allow small, rural and regional carriers to obtain roaming from at least three national carriers instead of just one or two. They are correct – a four-year obligation on the part of Verizon to honor the Alltel roaming agreements is simply not long enough to remedy the harm to competition and resulting market failure resulting from the Transaction. As Commissioner Adelstein noted in his separate statement: “With the loss of the largest regional CDMA carrier resulting from this transaction, and with only two available CDMA carriers nationwide, there is a real concern that smaller carriers may be unable to negotiate reasonable and nondiscriminatory roaming terms with national carriers.”²² Similarly, Commissioner Copps stated: “[T]he new, merged network will be the only game in town when it comes to roaming in many regions of the country.”²³

In other words, at the end of four years, when Verizon’s obligation will have terminated, small, rural and regional wireless carriers will need to negotiate roaming agreements with Verizon as a monopoly or duopoly supplier of CDMA roaming service. This situation will continue for at least three years, assuming the national carriers begin their LTE deployment in 2010, when the first commercially available LTE equipment is expected to be available. As discussed earlier, until Verizon faces additional competition for roaming dollars, Verizon will have every incentive to offer extremely unfavorable and anti-competitive roaming terms to small, rural and regional carriers.

²² *Adelstein Statement.*

²³ *Copps Statement.*

For the extension of the Alltel contracts to have a meaningful effect in preventing the Transaction from having an adverse effect on competition, the extension must last until there is a meaningful alternative available that can substitute for the competitive presence of Alltel in the marketplace. Otherwise, the temporary respite offered is merely a “bridge to nowhere.” Indeed, even Commissioners approving the *Merger Order* argued that the conditions were designed to build a competitive bridge to LTE. The issue is not whether these conditions are necessary. Rather, the issue is how long before LTE is available by at least three national carriers for a substantial portion of their networks. Based on Motorola’s experience and the roll-out of EVDO and High-Speed Downlink Packet Access (“HSPDA”), LTE will not be adopted and deployed nationwide for seven years by the major national carriers. Because CDMA carriers such as MetroPCS and NTELOS are currently limited to roaming on other CDMA carriers’ networks, such an extension must last until there are alternative roaming arrangements available to them. Such relief will likely be available only after LTE technology is deployed nationwide.²⁴ Under the most optimistic of scenarios Verizon and others will only *begin* to roll out LTE two years from now.²⁵ Accordingly, it is clear that LTE will not be meaningfully deployed until substantially after the four-year extension of the Alltel agreements has ended. For comparison, the rollout of Evolution Data Only (“EVDO”) began in 2003²⁶ and is *still* well short of completion after five years from the initial launch.²⁷ It will take at least as many, if not more, years to roll out LTE.

²⁴ Of course, if Petitioners’ experience with Verizon on EVDO is any indication, Verizon may likely refuse to engage in LTE roaming just as it has refused EVDO roaming. At least the universe of potential roaming partners under LTE will be expanded beyond that available for CDMA roaming, and it is to be hoped that other carriers will be more receptive to competition (and if not, that the Commission will assure that all carriers make such roaming available upon request).

²⁵ Reply Declaration at 41-42, ¶ 81.

²⁶ *Verizon Wireless to Launch EVDO Wireless Internet*, RDSL (America), 2003 WLNR 4282760, March 18, 2003.

²⁷ The Verizon EVDO network covers only 80% of the U.S. population. RCR Wireless Newscast Excerpt from VIDEO: Who Has the Best 3G Network? July 21, 2008 (“RCR 3G Article”). However, the Verizon

Moreover, given the substantial investment in EVDO and HSPDA by many carriers, it is likely that the start of LTE deployment will be postponed while that earlier investment is fully depreciated, particularly in today's economic climate. For example, Verizon currently depreciates its network equipment over a useful life of 3-11 years for central office equipment, and 3-15 years for other network equipment.²⁸ Given that a replacement before the end of the life of an asset may result in significant write-offs, the Commission should not anticipate any significant LTE deployment until EVDO and HSPDA investments have been fully depreciated. Petitioners anticipate that this will occur no sooner than seven years from now. Hence, Petitioners believe that a seven-year condition is appropriate and fully supported by the record. Moreover, seven years is a minimum estimate of when LTE will be available and deployed nationwide. Thus the proposed condition is not more restrictive than the facts dictate.

The rollout of LTE cannot possibly have any effect on the competitive harm resulting from the elimination of Alltel as a supplier of roaming minutes until LTE is substantially deployed by multiple carriers.²⁹ Further, there can be no assurance that AT&T, Verizon and T-Mobile will deploy LTE on any particular timetable. For example, with T-Mobile just in the early stages of its 3G rollout,³⁰ it is unlikely that T-Mobile will commence a 4G LTE rollout for some time to come. Thus, although well-intentioned and a good first step, the four-year obligation adopted in the *Merger Order* is simply too short to protect against the competitive harms resulting from the Transaction. As a result, the obligation of Verizon to honor the Alltel roaming agreements must

CDMA network covers 94% of the population, Reply Declaration at 27, ¶ 56, and considerably more of the area than the EVDO network. RCR 3G Article.

²⁸ See 10-K filed by Verizon Communications on February 28, 2008.

²⁹ If the five years it has taken for incomplete EVDO deployment is used as a benchmark with the starting place in 2010, the rollout of LTE would last at least beyond 2015 (or 7 years from today).

³⁰ Even though T-Mobile began planning its 3G network in 2006, its 3G rollout will cover only 27 metropolitan areas by the end of 2008. 3G Buildouts Tied to Spectrum Availability, RCR Wireless News, October 16, 2008.

be extended to a minimum of seven years to have any chance of mitigating these competitive harms.³¹

Commissioner Copps stated: “I am disappointed that discussions suggesting a seven year roaming commitment did not end successfully.”³² Similarly, Commissioner Adelstein stated: “I would have preferred more rigorous safeguards regarding roaming obligations beyond those set forth in the item and consistent with the consensus proposal put on the record by affected carriers.”³³ As mentioned earlier, the consensus proposal asked for a seven-year obligation as well.³⁴ For all these reasons, the Commission should extend the obligation to seven years upon reconsideration.

IV. On Reconsideration, the Commission Must Require the Merged Entity to Offer Data Roaming to the Extent and on the Same Terms and Conditions as Existing Alltel Contracts Offered to Third Parties in Order to Prevent Clear and Present Harm to Competition.

Petitioners, as well as other parties, also have demonstrated in this proceeding that, in order to preserve the competitive benefits of the presence of small, rural and regional carriers in the wireless market, Verizon must not be permitted to use its enhanced market power to deny automatic data roaming to some carriers, when at the same time Alltel was offering it to other carriers. Petitioners accordingly urged the Commission to condition the Transaction on a commitment by Verizon to offer automatic data roaming to third parties on the same terms and conditions as it was being offered by Alltel to a any other party, for the period of the extended Alltel agreements. In the *Merger Order*, however, with no analysis and very little discussion, the

³¹ In their Joint Petition, MetroPCS and NTELOS requested that the agreements be extended for ten years in order to assure LTE is fully deployed by multiple carriers. Seven years is therefore the bare minimum.

³² *Copps Statement.*

³³ *Adelstein Statement.*

³⁴ *See Industry Consensus Group Ex Parte Letter.*

Merger Order seemingly declined to impose such a condition.³⁵ It mentioned that it would consider in the currently pending roaming docket whether to impose such requirements on all wireless carriers at some future time, noting that in the past, “the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms)... .”

But this conclusion misses the fundamental point that the Transaction will result, not in the maintenance of the *status quo* that exists prior to the Commission’s future decision in the rulemaking, but rather in the evisceration of competition for data services *as it already exists today and would continue to exist and evolve but for the Transaction*. This is very much a transaction-specific harm, and so the Commission must, on reconsideration, impose conditions as to data roaming on Verizon that will keep the market at least as competitive as it would have been had Alltel remained an independent competitor for the same seven-year period. The carriers who have data services as part of their roaming agreements is largely a result of timing and happenstance. Limiting data services to only those carriers who have it before the Transaction is a game of regulatory musical chairs which does not serve the public interest.

As demonstrated in the Joint Petition, Verizon has done its best to thwart competition by refusing to provide automatic data roaming to other carriers such as Petitioners. By contrast, Alltel has been willing to provide data roaming, and has, for example, agreed to provide roaming for 1xRTT/EVDO services to NTELOS.³⁶ But Verizon, taking full advantage of its market

³⁵ *Merger Order* at ¶ 179-180. Given the limited discussion in the *Merger Order*, Petitioners are uncertain whether the Commission, in reminding Verizon of its Sections 201 and 202 obligations, was indicating that it would view any refusal by Verizon to provide data roaming on the same terms as in the ongoing Alltel agreements as a violation of these obligations. If this was the intent of the Commission, then the Commission should so clarify to eliminate any confusion.

³⁶ Joint Petition at 30. As noted below, Alltel also offered data roaming to MetroPCS, but at the time MetroPCS was unable to take advantage of the offer. This clearly demonstrates that “but for” the Transaction, MetroPCS would have data roaming available from Alltel.

leverage, and seeking to expand its market power at every turn, has slow-rolled all such requests, and, as stated in the Joint Petition, “there is no indication that Verizon will mend its ways short of an order by the Commission.”³⁷

There is every reason to believe that an independent Alltel would not only have continued to provide 1xRTT/EVDO to NTELOS on an automatic roaming basis,³⁸ but would have provided it to other carriers as well. Alltel also could have been expected to expand its automatic roaming offering to include new and evolved data services as they come online. This conclusion is supported not only by Alltel’s consistent pattern of behavior, but also by the market incentives that faced Alltel as a stand-alone regional carrier. For example, Alltel offered data roaming to MetroPCS but at that time MetroPCS could not take advantage of the offer for such service and it was not included in the agreement. There is no reason to believe that, absent a merger with Verizon, Alltel would have changed its position and not made such services available upon request by MetroPCS. Indeed, MetroPCS is now prepared to engage in data roaming, but Alltel has delayed entering into such an amendment pending the closing of the Transaction. As the Joint Petition showed:

Alltel and Verizon have engaged in widely divergent courses of action regarding in-market roaming, and these contrasting courses clearly illustrate both Verizon’s pervasive market power [and] Alltel’s more cooperative approach and the resulting serious damage to competition that would be posed by an unconditioned combination of the two. As a regional carrier, Alltel has considerable incentive, and has demonstrated its willingness, to enter into roaming arrangements with other regional carriers that provide some level of reciprocity and to set rates at more reasonable levels. Verizon, on the other hand, has an incentive to enter into fair agreements only with carriers whose footprints cover significant

³⁷ *Id.*

³⁸ To be sure, the requirement imposed by the Order that Verizon maintain in place Alltel’s existing roaming agreements for four years will protect NTELOS to the limited extent of its 1xRTT/EVDO services. However, as noted elsewhere herein, the period is too short to be adequate to keep competition safe from harm from the merger. But freezing NTELOS’ current arrangement in place, whatever the period, will do nothing to protect the competitive benefits of Alltel’s likely future behavior toward another carrier such as MetroPCS. or address the fact that there is no reason to believe that Alltel would also have made available not only 1xRTT/EVDO but also more advanced services to both NTELOS and other carriers (such as MetroPCS) on an automatic roaming basis.

territory that Verizon's does not, and has demonstrated its willingness to use its market power to deny fair roaming agreements to those carriers who do not offer significant footprints that Verizon does not cover.³⁹

As can be seen from its actual behavior, market forces caused Alltel to behave cooperatively not only with regard to in-region roaming, but with regard to data roaming as well. But as part of Verizon, Alltel no longer will have this incentive to deal reasonably and reciprocally with other carriers. Absent Commission action, the Transaction will result in a direct loss of competitors' ability to continue to obtain ever-increasing and evolving data roaming services from Alltel and to provide these services to their retail customers.

Moreover, Verizon faced at least some incentive to behave more reasonably with Alltel in the market – but this incentive will vanish post-merger:

Verizon's acquisition of Alltel will not merely result in the gain of market share (though this in itself would increase Verizon's market power). As a major regional carrier whose footprint has by and large been complementary of, rather than overlapping, Verizon's footprint, Alltel has exerted a constraining influence (albeit far from perfect) on Verizon's behavior greatly in excess of what one would expect based on its market share alone. This is because Verizon has been incented to enter into arrangements with Alltel that are more truly reciprocal and reasonable in character than those it has entered into with Petitioners and other regional carriers with greater overlap. Verizon needs Alltel to complete its nationwide footprint – and indeed this need, as the Applicants stress repeatedly in their Public Interest Statement, is the very *raison d'être* of the acquisition. Inasmuch as Verizon too must offer nationwide service, in the absence of the merger it has had to come to terms with Alltel for roaming services.⁴⁰

Since, after the consummation of the Transaction, Verizon will have direct access to the Alltel footprint, the indirect benefit to competition by other carriers from Alltel's presence in the market will have ceased.

³⁹ Joint Petition at 20.

⁴⁰ Joint Petition at 22 (footnotes omitted).

As discussed in the Joint Petition,⁴¹ subscribers will not understand and will be frustrated if they can roam on voice, but not on data, services. In general subscribers are not telecommunications attorneys or engineers and should not be forced to live with artificial distinctions, and the regulatory game of musical chairs makes this even more nonsensical. The adoption of policies that unnecessarily foster subscriber confusion and frustration are contrary to the public interest, but that is exactly what will happen if Verizon is permitted to refuse data roaming to its competitors.

Moreover, the fundamental policy goal supporting roaming extends to all communication services, whether they are classified as CMRS, telecommunications service or information service, regardless of their speed, technology, or platform, and regardless of whether or not they are interconnected. Therefore, the same conditions that apply to voice roaming, should apply to data roaming in this context. Thus, the Commission should require that, during the same seven-year period set forth herein with regard to Verizon's honoring of Alltel's agreements, Verizon also should be required to offer automatic data roaming on just and reasonable rates and terms to regional, small and rural carriers to the extent and on the same terms and conditions that Alltel offered data roaming to other third parties for the same seven-year period of time as it is required for voice roaming.

V. The Additional Roaming Conditions Requested by Petitioners are an Appropriate and Targeted Method to Address the Competitive Harms that Will Result from the Merger.

The Commission's guiding principles for merger review can be found in the order approving the merger between SBC Communications Inc. ("SBC") and Ameritech Corp. ("Ameritech"), wherein the Commission stated:

⁴¹ Joint Petition at 28-31.

We conclude above that the proposed merger of SBC and Ameritech poses significant potential public interest harms by: (a) removing one of the most significant potential participants in local telecommunications mass markets both within and outside of each company's region; (b) eliminating an independent source for effective, minimally-intrusive comparative practices analyses among the few remaining major incumbent LECs as the Commission implements and enforces the 1996 Act's market-opening requirements; and (c) increasing the incentive and ability of the merged entity to discriminate against rivals, particularly with respect to advanced services.⁴²

As a result the Commission adopted conditions to "significantly mitigate any potential public interest harms."⁴³ In particular, the Commission found that:

[S]everal commitments will alleviate the concern that the merged firm will use its combined size and market power to discriminate more effectively against its rivals in its in-region markets for local services as well as advanced services. . . . The conditions that we adopt today are carefully targeted at the types of discrimination the merger was otherwise most likely to engender. . . . The combined entity's incentive to discriminate, stemming from its larger geographic footprint, is especially likely, if left unchecked, to translate into an ability to discriminate against the provision of advance services.⁴⁴

The Transaction is similar to the Ameritech-SBC merger in that (a) the merger affects critical upstream inputs to a local retail market, and (b) the acquired party was an important source of competition and considered the more flexible of the merging parties. But because of the continuing consolidation of the wireless market, as well as Alltel's unique role, the competitive harms arising from this Transaction go beyond those that were present in the Ameritech-SBC merger and call for additional conditions to protect consumers.

Just as the Commission recognized that the loss of Ameritech and the loss of GTE in their respective mergers would result in the removal of significant market participants and increase the

⁴² *Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14854-55 (1999) ("*Ameritech*"); see also *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14143 (2000) ("*GTE*").

⁴³ *Ameritech*, 14 FCC Rcd at 14887.

⁴⁴ *Id.* at 14889-90; see also *GTE*, 15 FCC Rcd at 14195, 14199.

incentive and ability of the merged entities to discriminate against rivals and eliminate important benchmarks, the competitive harms demonstrated by Petitioners are a direct result of this Transaction and require Transaction-specific remedies. The harms resulting from the Transaction are different from and more significant than other recent wireless mergers examined by the Commission, because of both the size of the Transaction and the cumulative effect of prior transactions. Unlike prior mergers, it is the specific removal of Alltel as a competitor that magnifies and qualitatively changes the harm. This problem did not exist for earlier wireless transactions where (i) there were either more remaining competitors; (ii) the entity being acquired was smaller with less market impact, and (iii) the entity being acquired did not occupy the unique – and vital – place in the market that Alltel has occupied. Therefore, the Commission’s reliance in the *Merger Order* on its actions in other recent mergers⁴⁵ was inappropriate because it was based on completely different fact patterns.

The additional proposed roaming conditions are specifically requested and narrowly drawn for the purpose of mitigating these harms caused by the removal of Alltel as a competitor as well as a supplier of an important upstream product. As the Commission stated recently in the order approving the merger of AT&T with BellSouth:

The Commission has the authority to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction. Indeed, our public interest authority enables us to impose and enforce conditions based upon our extensive regulatory and enforcement experience to ensure that the merger will, overall, serve the public interest.⁴⁶

⁴⁵ *Merger Order* at ¶ 179 and n. 624.

⁴⁶ *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5674-75 (2007).

Because the additional roaming conditions requested by Petitioners meet this standard of “narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction,” the Commission should impose the requested additional roaming conditions.

VI. Conclusion

For the reasons stated herein, Petitioners respectfully request that the Commission grant reconsideration and require that the following additional roaming conditions be imposed:

- Extend the time period when Verizon must honor existing Alltel roaming agreements with each regional, small and/or rural carrier throughout the combined service area from four to the longer of seven years or the term of either agreement that a party may have with Verizon or Alltel; and
- For seven years from the date the Transaction closes, require that Verizon offer automatic roaming for data (including non-interconnected) services and features, including services that have been classified as information services, to the extent, and on the same terms and conditions, that Verizon/Alltel offers such services and features to any carrier.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I, Latonya Y. Ruth, have duly served the attached Petition for Limited Consideration of the Commission's November 10, 2008 Memorandum Opinion and Order in WT Docket No. 08-95 upon all parties listed herein by depositing copies of same in the United States mail, first class postage prepaid this 10th day of December 2008, addressed as follows:

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