

**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)	

PETITION FOR CLARIFICATION OR RECONSIDERATION

Leap Wireless International, Inc. (“Leap”) requests clarification of the Memorandum, Opinion and Order, FCC 08-258 (rel. Nov. 10, 2008) (“*Verizon/ALLTEL Order*”), which approved the acquisition of ALLTEL Corporation (“ALLTEL”) by Cellco Partnership d/b/a Verizon Wireless (“Verizon”).¹

In the *Verizon/ALLTEL Order*, the Commission imposed a number of conditions on the roaming behavior of Verizon based on commitments made, and ultimately augmented, by Verizon itself.² While these conditions are insufficient, standing alone, to rein in potential anti-competitive behavior in the roaming area, Leap will accept the Commission’s invitation to continue to address these issues in “other, more appropriate proceedings,” including the still

¹ *Atlantis Holdings LLC and Cellco Partnership d/b/a Verizon Wireless*, FCC 08-258, Memorandum Opinion and Order, WT Docket No. 08-95 (rel. Nov. 10, 2008) (“*Verizon/ALLTEL Order*”).

² *See id.* at ¶ 178.

pending roaming rulemaking.³ Leap also welcomes the Commission’s caution that Commercial Mobile Radio Service carriers must “provide roaming on reasonable and non-discriminatory terms and conditions.”⁴

Rather, Leap will focus this petition on certain clarifications of the conditions that the Commission did impose. This requested confirmation of the conditions’ intended meaning will help make them real constraints on anti-competitive behavior – a good first step. Specifically, Leap requests confirmation that: (a) post-merger Verizon’s obligations with respect to its roaming partners’ choice of roaming agreement applies to the *entirety* of the selected agreement; and (b) the roaming agreement selected by post-merger Verizon’s roaming partner will apply to the future service areas and spectrum bands of each carrier.

I. VERIZON’S OBLIGATIONS WITH RESPECT TO THEIR ROAMING PARTNERS’ CHOICE OF ROAMING AGREEMENT APPLY TO THE ENTIRETY OF THE SELECTED AGREEMENT

The Commission conditioned approval of the Verizon/ALLTEL merger on four roaming commitments made by Verizon. Specifically, the Commission conditioned approval on Verizon:

1. “honor[ing] ALLTEL’s existing agreements with other carriers to provide roaming on ALLTEL’s CDMA and GSM networks”;
2. “keep[ing] the rates set forth in [ALLTEL] roaming agreements[s] [with regional, small, and/or rural carriers] in force for the full term of the agreement, notwithstanding any change of control or termination for convenience provisions that would give Verizon Wireless the right to accelerate the termination of such agreement”;
3. giving “each ... regional, small, and/or rural carrier that currently has roaming agreements with both ALLTEL and Verizon Wireless ... the option to select

³ *Verizon/ALLTEL Order* at ¶ 180 (citing *Reexamination of Roaming Obligations of CMRS Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 (2007)).

⁴ *Verizon/ALLTEL Order* at ¶ 178.

either agreement to govern all roaming traffic between it and post-merger Verizon”; and

4. “not adjust[ing] upward the rates set forth in ALLTEL’s existing agreements with each regional, small and/or rural carrier for the full term of the agreement or for four years from the closing date, which ever occurs later.”⁵

Despite some inconsistency in the text of these conditions, the better reading of these conditions is that they apply to the entirety of the roaming agreement selected by Verizon’s roaming partner, and not just the rates in those agreements. In other words, the conditions should be understood to mean that: (1) roaming partners can choose whether the *entire* Verizon agreement or the *entire* ALLTEL roaming agreement is to govern all of their roaming traffic with post-merger Verizon (*i.e.* they cannot pick-and-choose terms); and (2) if the ALLTEL agreement is selected, Verizon will honor that agreement *in its entirety*, including without limitation the rates in that agreement, for its full term, or for four years from closing, whichever is later. The inability of roaming partners to pick-and-choose specific terms in the Verizon and ALLTEL agreements is consistent with Verizon’s own understanding of its commitments.⁶ It follows that Verizon also cannot pick-and-choose which terms (rate or non-rate) to honor in the ALLTEL agreement or for how long – it must honor them all.

To the extent that there is any lingering uncertainty over how these conditions should be read, the Commission should eliminate it by confirming that the above reading is the correct one. Otherwise, Verizon may incorrectly conclude that the *Verizon/ALLTEL Order* leaves room to argue that the non-rate terms of a selected ALLTEL agreement can be altered during the term of

⁵ See *Verizon/ALLTEL Order* at ¶ 178.

⁶ See, *e.g.*, Letter from John T. Scott III, Verizon Wireless to Marlene Dortch, Secretary, FCC, *filed in* WT Docket No. 08-95 (filed Nov. 4, 2008) (“*Verizon Oct. 31 Ex Parte*”) (“As to the request to allow carriers to pick and choose various terms from other agreements and import them into their own agreements, Mr. Tauke said that the company opposed this for the reasons set forth in the company’s previous filings.”).

the agreement or within four years of closing. While Leap fully expects such arguments to fail, they could embroil the Commission and the parties in protracted and wasteful litigation over the scope and meaning of the conditions. The Commission can avoid that outcome tomorrow by issuing a clarification today.

II. THE ROAMING AGREEMENT SELECTED BY VERIZON'S ROAMING PARTNER APPLIES TO THE FUTURE SERVICE AREAS AND SPECTRUM BANDS OF EACH CARRIER

As noted above, one of the conditions set forth in the *Verizon/ALLTEL Order* is that non-national carriers may choose between their Verizon and ALLTEL roaming agreements to govern “all roaming traffic” with post-merger Verizon.⁷ Moreover, Verizon has explained that once that carrier selects one of the two roaming agreements, the agreement would apply “to all roaming traffic of the requesting carrier throughout all of the combined company’s service area.”⁸ The condition is not limited by its terms to present service areas or spectrum bands.

Out of an abundance of caution, the Commission should confirm what is already the straightforward interpretation of the condition – “all” traffic means just that, and extends to roaming traffic in new service areas or frequency bands that are added within the applicable period by either the requesting carrier or Verizon. In other words, “*all* roaming traffic” exchanged between the carrier and Verizon under the chosen agreement is necessarily a forward-looking concept, and cannot be gerrymandered to exclude new service areas and spectrum.

⁷ See *Verizon/ALLTEL Order* at ¶ 178.

⁸ Letter from John T. Scott III, Verizon Wireless to Marlene H. Dortch, Secretary, FCC, filed in WT Docket No. 08-95 (filed Nov. 4, 2008) (“*Verizon Nov. 4 Ex Parte*”).

III. CONCLUSION

Leap respectfully requests that the Commission confirm the intended meaning of the merger conditions in the manner discussed above.

Respectfully submitted,

Robert J. Irving
Senior Vice President & General Counsel
Leap Wireless International, Inc.
10307 Pacific Center Court
San Diego, CA 92121
Tel: 858-882-6000
Fax: 858-882-6010

Laurie Itkin
Director, Government Affairs
Leap Wireless International, Inc.
10307 Pacific Center Court
San Diego, CA 92121
Tel: 858-882-6226
Fax: 858-882-6010

_____/s/_____
Pantelis Michalopoulos
Chung Hsiang Mah
Steptoe & Johnson LLP
1330 Connecticut Avenue NW
Washington, D.C. 20036
Tel: 202-429-3000
Fax: 202-429-3902
*Counsel for Leap Wireless
International, Inc.*

December 10, 2008

CERTIFICATE OF SERVICE

I, Chung Hsiang Mah, hereby certify that on December 10, 2008, I caused true and correct copies of the foregoing to be served on the following by first-class United States mail or, where indicated by *, by electronic mail:

John T. Scott, III
Vice President and Deputy General Counsel
Verizon Wireless
1300 I Street, N.W., Suite 400 West
Washington, DC 20005
(202) 589-3760

Alltel Communications, LLC
Wireless Regulatory Supervisor
One Allied Drive, B1F02-D
Little Rock, AR 72202
(501) 905-8555

Nancy J. Victory
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7344

Cheryl A. Tritt
Morrison Foerster
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, DC 20006-1888
(202) 887-1510

Clive D. Bode
Atlantis Holdings LLC
301 Commerce Street, Suite 3300
Fort Worth, TX 76102
(817) 871-4000

Kathleen Q. Abernathy
Wilkinson Barker Knauer LLP
2300 N Street, NW, Suite 700
Washington, D.C. 20037

Glenn S.. Rabin, Vice President
Federal Regulatory Counsel
Alltel Communications
601 Pennsylvania Avenue, N.W., Suite 720
Washington, D.C. 20004
(202) 783-3970

Caressa D. Bennet
Michael R. Bennet
Donald L. Herman, Jr.
Bennet & Bennet, PLLC
4350 East West Highway, Suite 201
Bethesda, MD 20814
(202) 371-1500
*Counsel for Rural Telecommunications Group,
Inc. and Palmetto MobileNet, L.P.*

Chairman Kevin J. Martin*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Kevin.martin@fcc.gov

Commissioner Michael J. Copps*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Michael.copps@fcc.gov

Commissioner Jonathan S. Adelstein*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Jonathan.adelstein@fcc.gov

Commissioner Deborah Taylor Tate*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Deborah.tate@fcc.gov

Commissioner Robert M. McDowell*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Robert.mcdowell@fcc.gov

Rick C. Chessen*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Rick.chessen@fcc.gov

Wayne Leighton*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Wayne.leighton@fcc.gov

James D. Schlichting*
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
James.schlichting@fcc.gov

Erin McGrath*
Mobility Division
Wireless Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Erin.mcgrath@fcc.gov

Linda Ray*
Broadband Division, Wireless Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Linda.ray@fcc.gov

Jodie May*
Policy Division, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Jodie.may@fcc.gov

Erika Olson*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Erika.olsen@fcc.gov

Renee Crittendon*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Renee.crittendon@fcc.gov

Angela E. Giancarlo*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Angela.giancarlo@fcc.gov

Chris Moore*
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Chris.Moore@fcc.gov

Susan Singer*
Spectrum Competition and Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Susan.singer@fcc.gov

David Krech*
Policy Division, International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
David.krech@fcc.gov

Jim Bird*
Office of General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Jim.bird@fcc.gov

Best Copy & Printing, Inc.*
FCC Copy Contractor
fcc@bcpiweb.com

Jon Wooster, President
U.S. Cattlemen's Association
P.O. Box 339
San Lucas, CA 93954

Wayne T. Brough, Chief Economist
Freedom Works Foundation
601 Pennsylvania Avenue, NW, Suite 7000
Washington, DC 20004

Robert K. Johnson, President
Consumers for Competitive Choice
P.O. Box 329
Greenwood, IN 46143

Benjamin Dickens
John A. Prendergast
Robert M. Jackson
Blooston, Mordkofsky, Dickens, Duffy
& Prendergast, LLP
2120 L Street, NW, Suite 300
Washington, DC 20037
Counsel for the Rural Carriers, et al.

Barry L. Kennedy, CAE, IOM, President
Nebraska Chamber of Commerce & Industry
1320 Lincoln Mall
Lincoln, NE 68509

Albert Zapanta, President & CEO
U.S.-Mexico Chamber of Commerce
1300 Pennsylvania Avenue, NW
Suite G-0003
Washington, DC 20004

Traci L. McClellan, JD, MA, Exec. Director
National Indian Council on Aging
10501 Montgomery Boulevard, NE, Suite 210
Albuquerque, NM 87111

Jenifer Simpson, Senior Director
Telecommunications and Technology Policy
American Assoc. of People with Disabilities
1629 K Street, N.W., Suite 503
Washington, DC 20006

Harry Alford, President & CEO
National Black Chamber of Commerce
1350 Connecticut Avenue, NW, Suite 405
Washington, DC 20036

Leslie Sanchez, Co-Chair
Jose F. Nino, Co-Chair
Hispanic Alliance for Prosperity Institute
807 Brazos, Suite 316
Austin, TX 78701

Barbara Kasoff, President
Women Impacting Public Policy
1615 L Street, NW, Suite 650
Washington, DC 20036

Whitney North Seymour, Jr.
EMR Policy Institute
425 Lexington Avenue, Room 1721
New York, NY 10017

Yanira Cruz, MPH, DrPH, Pres. & CEO
National Hispanic Council on Aging
734 15th Street, NW
Washington, DC 20005

Brent A. Wilkes
LULAC National Executive Director
League of United Latin American Citizens
2000 L Street, NW, Suite 610
Washington, DC 20036

Cherie R. Kiser
Cahill Gordon & Reindel LLP
1990 K Street NW
Suite 950 Washington, DC 20006

Hector V. Barreto, Chairman
The Latino Coalition
3255 Wilshire Boulevard, #1850
Los Angeles, CA 90010

Daniel Alvarez
Willkie Farr & Gallagher LLP
1875 K Street, NW
Washington, DC 20006
Counsel for Denali Spectrum LLC, et al.
(the Roaming Petitioners)

Richard K. Studley, President & CEO
Michigan Chamber of Commerce
600 S. Walnut Street
Lansing, MI 48933

Kenneth E. Hardman
2154 Wisconsin Avenue, NW, Suite
Washington, DC 20007
Attorney for Ritter Communications, Inc.
And Central Arkansas Rural Cellular L.P.

Daniel R. Ballon
Policy Fellow, Technology Studies
Pacific Research Institute for Public Policy
One Embarcadero Center, Suite 350
San Francisco, CA 94111

Karen Kerrigan, President & CEO
Small Business & Entrepreneurship Council
2944 Hunter Mill Road, Suite 204
Oakton, VA 22124

Daniel Mitchell
Jill Canfield
National Telecommunications Cooperative
Association (NTCA)
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203

Victor F. Capellan, President
Dominican American National Roundtable
1050 17th Street, NW, Suite 600
Washington, DC 20036

William Sepic, CCE, President & CEO
Kristin Beltzer, VP, Gov't Relations
Lansing Regional Chamber of Commerce
500 East Michigan Avenue, Suite 200
Lansing, MI 48912

Stephen G. Kraskin
2154 Wisconsin Avenue, NW
Washington, DC 20007
Attorney for the Rural Independent
Competitive Alliance

Mary McDermott
Senior Vice President, Legal & Reg. Affairs
NTELOS Inc.
401 Sprint Lane
Waynesboro, VA 22980

Mark Stachiw
MetroPCS Communications, Inc.
2250 Lakeside Boulevard
Richardson, TX 7582

Wayne Stenchjem, Attorney General
State of North Dakota
Office of Attorney General
Consumer Protection & Antitrust Division
P.O. Box 1054
Bismarck, ND 58502-1054

Stuart Polikoff, Director of Gov't Relations
Brian Ford, Reg. Counsel
OPASTCO
21 Dupont Circle, NW, Suite 700
Washington, DC 20036

Edwin Hill, International President
International Brotherhood of
Electrical Workers
900 Seventh Street, NW
Washington, DC 20001

David L. Nace
Todd B. Lantor
Lukas, Nace, Gutierrez & Sachs, Chartered
1650 Tysons Boulevard, Suite 1500
McLean, VA 22102
*Counsel for Rural Cellular Association
and Cellular South, Inc.*

William L. Roughton, Jr.
Vice President, Legal & Regulatory Affairs
Centennial Communications Corp.
3349 Route 138, Building A
Wall, NJ 07719

Patrick J. Whittle
Jean L. Kiddoo
Bingham McCutchen LLP
2020 K Street, NW
Washington, DC 20036
*Counsel for MetroPCS Communications,
Inc. and NTELOS Inc.*

Randolph J. May, President
The Free State Foundation
10701 Stapleford Hall Drive
Potomac, MD 20854

Brian Fontes, CEO
National Emergency Number Association
4350 North Fairfax Drive, Suite 750
Arlington, VA 22203

Aaron Shainis
Shainis & Peltzman, Chartered
1850 M Street, NW
Washington, DC 20036

Larry A. Blosser
Law Offices of Larry A. Blosser, P.A.
3565 Ellicott Mills Drive, Suite C-2
Ellicott City, MD 21043
*Attorney for the Ad Hoc Public Interest
Spectrum Coalition*

Martin J. Wright, President
FBI National Academy Associates, Inc.
West Virginia Chapter
17 Aster Drive
Terra Alta, WV 26764

Leslie T. Hyman, Sr. Investigator
Troop "C" Major Crimes Unit
New York State Police
Route 7, Box 300
Sidney, NY 13838-0300

Tom Stone, Executive Director
FBI Law Enforcement Executive Development
P.O. Box 2349
West Chester, PA 19380

David Don
SpectrumCo LLC
2001 Pennsylvania Avenue, NW, #500
Washington, DC 20006

Michael Rosenthal
SouthernLINC Wireline
5555 Glenridge Connector, Suite 500
Atlanta, GA 30342

Chris Murray
Consumers Union
1101 17th Street, NW, Suite 500
Washington, DC 20036

Michael Calabrese
New America Foundation
1630 Connecticut Avenue, NW, 7th Floor
Washington, DC 20009

Jef Pearlman
Public Knowledge
1875 Connecticut Avenue, NW, Suite 650
Washington, DC 20009

Martin Ammori
Free Press
501 Third Street, NW, Suite 875
Washington, DC 20001

Thomas J. Sugrue, VP, Government Affairs
Kathleen O' Brien Ham, VP, Fed Reg Affairs
Sara F. Leibman, Dir, Fed Reg Affairs
Patrick T. Welsh, Sr. Corp. Counsel
T-Mobil USA, Inc.
401 Ninth Street, NW, Suite 550
Washington, DC 20004

Harold Feld
Media Access Project
1625 K Street, NW, Suite 1000
Washington, DC 20006

William Jarvis, CEO
Revol Wireless
7575 East Pleasant Valley, Suite 100
Independence, OH 44131

Neil Grubb, President & CEO
LCW Wireless, LLC
1750 NW Naito Parkway, Suite 250
Portland, OR 97209

Dale Lestina, President
Organizations Concerned About
Rural Education (OCRE)
2725 Connecticut Avenue, NW, Suite 302
Washington, DC 20008

Antonio Gil Morales
National Commander
American GI Forum of the U.S.
1441 I Street, NW, Suite 810
Washington, DC 20005

David C. Lizarraga, Chairman
U.S. Hispanic Chamber of Commerce
2175 K Street, NW, Suite 100
Washington, DC 20037

Susan Au Allen
U.S. Pan Asian American
Chamber of Commerce
Education Foundation
1329 18th Street, NW
Washington, DC 20036

Allen M. Todd, General Counsel
Denali Spectrum, LLC
1 Doyon Place, Suite 300
Fairbanks, AK 99701-2941

William Jarvis, CEO
Mobi PCS
733 Bishop Street, Suite 1200
Honolulu, HI 96813

Charlene Schlueter
2200 N Jacobson Road
Suttons Bay, MI 49682

Ed Black
Computer and Communications
Industry Association
900 17th Street, NW, Suite 1100
Washington, DC 20006

Governor Dave Heineman
P.O. Box 94848
Lincoln, NE 68509-4848

Rolayne Ailts Wiest
South Dakota Public Utilities Commission
500 E Capitol Avenue
Pierre, SD 57501-5070

The ASPIRA Association
1444 Eye Street NW, Suite 800
Washington, DC 20005

Natalie G. Roisman
Wilkinson Barker Knauer LLP
2300 N Street, NW, Suite 700
Washington, DC 20037
Counsel for Atlantis Holdings LLC

Jonathan E. Canis
Oglala Sioux Tribe of the Pine
Ridge Indian Reservation
1401 Eye Street, N.W.
Suite 700
Washington, DC 20005

Claude L. Stout
Telecommunications for the Deaf, Inc.
8630 Fenton Street, Suite 604
Silver Spring MD 20910

Joe Crawford
West Virginia State Fraternal Order of Police
881 South Walnut Street
St. Albans, WV 25177

/s/

Chung Hsiang Mah