

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

To: The Commission

PETITION FOR RECONSIDERATION

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Summary

Public Service Communications, Inc. hereby requests that the Commission, on reconsideration, either rescind its approval of, or place certain conditions on, the merger proposed in the captioned applications filed by Celco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) and Atlantis Holdings LLC (“Atlantis”) encompassing licenses and other authorizations held by ALLTEL Corporation. Verizon and ALLTEL are two dominant wireless carriers in rural areas. Once merged, they will become a monolith in terms of the amount of spectrum held, and in terms of leverage in roaming negotiations. For these reasons, it is necessary to impose the following conditions on the proposed merger: (1) require that additional ALLTEL cellular properties be divested (including those markets identified herein), where overlapped by Verizon cellular operations and/or where the merger would result in an excessive concentration of spectrum, due to considerations of spectrum accumulation/dominant market share and viability of the adjoining divested properties; (2) require that the merged entity offer reasonable roaming rates and terms to rural wireless carriers; (3) require that the merged entity offer 3G voice and data and other broadband roaming on reasonable terms to rural wireless carriers, on both a foreign market and on an “in-market” or “home roaming” basis; and (5) require that the merged entity refrain from entering into handset exclusivity arrangements until the conclusion of a rulemaking proceeding considering regulations governing the handset issue. The Commission should also hold any decision on the merger in abeyance until the Department of Justice and the United States District Court have had an opportunity to consider public comments filed in response to the proposed settlement of the pending lawsuit filed against the proposed merger.

Table of Contents

	<u>Page</u>
Summary	ii
I. The Commission Failed to Take Adequate Measures to Prevent Anticompetitive Harms from the Proposed Merger	2
II. Verizon Wireless Should Be Required To Divest ALLTEL’s Cellular Properties Where Overlapped by Verizon Wireless Properties, Including Additional Markets in Georgia and Alabama	5
III. The Commission Should Require that Verizon/ALLTEL Ensure Rural Telecom Carriers have a Realistic Opportunity to Acquire Divested Operations.	10
IV. The Commission Should Condition Any Grant on the Provision of 3G and Other Broadband Roaming Service	11
V. The Commission Should Reconsider its Decision Not to Condition Any Grant on the Elimination of Handset Access Obstacles for Smaller Carriers	14
VI. The Commission Should Hold the Merger in Abeyance Pending Final Consideration of Public Comment on the DOJ Settlement with Verizon, As Required By the Tunney Act.	15

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PETITION FOR RECONSIDERATION

Public Service Communications, Inc. (PSC)², by its attorneys and pursuant to Section 1.106 of the Commission’s Rules, hereby requests the Commission to reconsider

¹ This file number has been designated the lead application. See *Public Notice*, Mimeo DA 08-1481, released June 25, 2008 at page 2 footnote 3.

² Public Service Communications, Inc. (including its subsidiaries Public Service Telephone Company and Public Service Wireless, Inc.) participated in the August 11, 2008 Petition to Condition Transaction Approval (“Petition”) and related reply comments filed by Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP on behalf of several rural telephone carrier clients (“the Rural Carriers”), in the above captioned proceeding. PSC is a provider of rural telecommunications services in various parts of the State of Georgia.

its approval of the captioned transfer of license applications filed by Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless” or “Verizon”) and Atlantis Holdings LLC (“Atlantis”) encompassing licenses and other authorizations held by ALLTEL Corporation subsidiaries and partnerships (collectively “ALLTEL”). As discussed below, the Commission’s approval action, embodied in its November 10, 2008 *Memorandum Opinion and Order and Declaratory Ruling* (“*Approval Order*”) in the above-captioned proceeding³, failed to impose conditions designed to ensure that the proposed merger of these two telecom giants does not result in an anticompetitive impact on small telecommunications carriers that serve primarily rural areas. In support hereof, the following is shown:

I. The Commission Failed To Take Adequate Measures To Prevent Anticompetitive Harms From The Proposed Merger

1. The Rural Carriers’ Petition made a showing that the Commission needed to impose several conditions on the proposed merger, in order to prevent anticompetitive harms to rural wireless carriers and their customers. While the Commission did adopt certain measures consistent with the Rural Carriers’ Petition (such as the requirement that Verizon justify its costs in support of receiving Universal Service Fund monies), it is respectfully submitted that the *Approval Order* did not go far enough in addressing the rest of the showings made by the Rural Carriers and the rest of the rural wireless industry. And particular to PSC, the Commission failed to address the need for more ALLTEL cellular operations to be divested in the States of Georgia and Alabama (as well as other

³ Mimeo No. FCC 08-258, released November 10, 2008 (Chairman Martin and Commissioner Tate issuing separate statements; Commissioner McDowell approving in part, concurring in part and issuing a statement; Commissioners Copps and Adelstein concurring in part, dissenting in part and issuing separate statements).

markets), to ensure that the purchaser of the divested properties could operate a viable competing business. The Commission also did not impose adequate conditions to ensure that rural carriers had a realistic opportunity to acquire ALLTEL cellular systems to be divested in their areas of interest.

2. Section 310(d) of the Communications Act of 1934, as amended, requires the Commission to determine whether a proposed transfer of control or assignment of licenses will serve the public interest, convenience and necessity. In making this determination, the Commission is required to “assess whether the proposed transactions comply with specific provisions of the Communications Act, the Commission’s rules and federal communications policy.”⁴ The Commission considers whether a proposed transaction “could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.”⁵ To do this, the Commission employs “a balancing test weighing any potential public interest harms of a proposed transaction against any potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest.”⁶ The Commission’s public interest authority also enables it to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by

⁴ See, e.g., *ALLTEL-Midwest Order*, 21 FCC Rcd. 11,535 (2006) at Para. No. 16; *SBC-AT&T Order*, 20 FCC Rcd. 18,290 (2005) at Para. No. 16; *Verizon-MCI Order*, 20 FCC Rcd. 18,433 (2005) at Para. No. 20; *Sprint-Nextel Order*, 20 FCC Rcd. 13,967 (2005) at Para. No. 20; *ALLTEL-WWC Order*, 20 FCC Rcd. 13,035 (2005) at Para. No. 17; and *Cingular-AT&T Wireless Order*, 19 FCC Rcd. 21,522 (2004) at Para. No. 20.

⁵ *Alltel-Midwest Order*, at Para. No. 16; *SBC-AT&T Order*, at Para. No. 16; *Verizon-MCI Order*, at Para. No. 16; *Sprint-Nextel Order* at Para. No. 20.

⁶ *ALLTEL-Midwest Order*, at Para. No. 16; *SBC-AT&T Order*, at Para. No. 16; *Verizon-MCI Order*, at Para. No. 16; *Sprint-Nextel Order*, at Para. No. 20; *ALLTEL-WWC Order*, at Para. No. 17; *Cingular-AT&T Wireless Order*, at Para. No. 40.

the transaction.⁷ Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions, not inconsistent with law, which may be necessary to carry out the provisions of the Act.⁸ The conditions proposed by the Rural Carriers were designed to address market conditions that will be shaped by the proposed transaction, and thus would constitute a permissible exercise of Commission authority. See In the Matter of Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees; For Consent To Transfer Control of Licenses and Authorizations, 21 FCC Rcd 7358, 7361 (FCC 2006).

It is respectfully submitted that in some instances (as discussed below), the Commission did not adequately consider the arguments set forth in the Petition and/or other parts of the record in this proceeding,⁹ and did not explain why these arguments were not relevant.¹⁰ In other instances, the Commission did not engage in correct analysis of the record and struck the wrong balance in applying the public interest test described

⁷ See, e.g., Sprint-Nextel Order, 20 FCC Rcd at 13978 P23; ALLTEL-Western Wireless Order, 20 FCC Rcd at 13065 P21; Cingular-AT&T Wireless Order, 19 FCC Rcd at 21545 P43 (conditioning approval on the divestiture of operating units in select markets). See also Deutsche Telekom-VoiceStream Wireless Order, 16 FCC Rcd 9779 (2001) (conditioning approval on compliance with agreements with Department of Justice and Federal Bureau of Investigation addressing national security, law enforcement, and public safety concerns).

⁸ 47 U.S.C. § 303(r). See also Sprint-Nextel Order, 20 FCC Rcd at 13978-79 P23; ALLTEL-Western Wireless Order, 20 FCC Rcd at 13066 P22; Cingular-AT&T Wireless Order, 19 FCC Rcd at 21545 P43; United States v. Southwestern Cable Co., 392 U.S. 157, 178 (1968) (Section 303(r) powers permit Commission to order cable company not to carry broadcast signal beyond station's primary market); United Video, Inc. v. FCC, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (syndicated exclusivity rules adopted pursuant to Section 303(r) authority).

⁹ See Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 415, (1971) (Reviewing court must consider “whether the decision was based on a consideration of the relevant factors”).

¹⁰ Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 462 US 29, 43 (1983) (Holding “the requirement that an agency action not be arbitrary and capricious includes a requirement that an agency adequately explain its result”).

above¹¹, and/or failed to consider more reasonable alternatives.¹² For these reasons, the Commission should reconsider its Approval Order.

II. Verizon Wireless Should Be Required To Divest ALLTEL's Cellular Properties Where Overlapped By Verizon Wireless Properties, Including Additional Markets In Georgia And Alabama

3. The Commission can take official notice that the merged entity will control both cellular licenses in many Cellular Market Areas ("CMAs"). With Verizon Wireless and ALLTEL being two of the dominant nationwide/regional wireless carriers in the country, especially in rural areas where ALLTEL has focused its attention, the combination of these entities will lessen competition in rural America, and the impact of this lessened competition will be exacerbated by the merged entity's ability to control a huge share of spectrum in many areas. And because cellular is by far the most well-established wireless service, allowing the merger to combine both cellular blocks would give Verizon/ALLTEL a combined market share of staggering proportion. Therefore, the Rural Carriers had requested that the merger parties be required to divest the ALLTEL cellular systems wherever there is overlap with Verizon Wireless cellular spectrum; and the parties should be required to divest wherever there would be an excessive concentration of spectrum, even if only one cellular license is involved.

¹¹ Greater Boston Television Corp. v. FCC, 444 F2d 841, 850-52 (DC Cir 1970)(Courts will intervene where "...the agency has not really taken a 'hard look' at the salient problems, and has not genuinely engaged in reasoned decision making.")

¹² *See, e.g., Jacob Siegel Co. v. FTC*, 327 US 608 (1946)(remanding case in which agency did not reasonably consider whether a lesser alternative method would suffice).

4. In this regard, the Rural Carriers requested that the Commission require that the merger parties to divest the following additional markets:

CMA 153 Columbus, GA MSA
 CMA 261 Albany, GA MSA
 CMA 311 AL 5 - Cleburne RSA
 CMA 314 AL 8 – Lee RSA
 CMA 375 GA 5 – Haralson RSA
 CMA 376 GA 6 – Spalding RSA
 CMA 392 ID 5 – Butte RSA
 CMA 393 ID 6 – Clark RSA

5. Attachment C of the Petition included a showing that the merged entity would hold both cellular spectrum blocks in these CMAs, as well as other spectrum. In many areas, the merged entity would exceed the Commission's 95 MHz spectrum guidepost as well. Allowing it to retain the ALLTEL cellular spectrum in these markets would significantly lessen competition, even though these markets were not on the list of markets proffered by Verizon Wireless in its July 22 *ex parte* divestiture offer letter. More importantly, the Petition pointed out that it will be difficult to successfully operate the divested cellular systems if there are not enough population centers included to make for a viable base of customers. Consistent with the points raised by the Petition, the Department of Justice engaged in further discussions with Verizon Wireless, eventually resulting in the addition of two of the above markets -- CMA 261 (Albany, Georgia MSA) and CMA 376 (GA 6 – Spalding RSA) -- to the list of markets to be divested.¹³ While this was of some solace to PSC, divestiture of the other markets listed in the Petition -- especially the Columbus, Georgia MSA -- is vital to allow the ultimate

¹³ See October 7, 2008 letter to the Federal Communications Commission from John T. Scott, Deputy General Counsel of Verizon Wireless. Mr. Scott's letter added 15 CMAs to the 85 CMAs Verizon previously designated as areas where Verizon intends to divest Alltel properties.

purchaser to operate a viable cellular system that will compete effectively against Verizon, for the reasons set forth in the Petition.

6. In particular, the four CMAs not included in Verizon's October 7, 2008 letter encompass Columbus and the surrounding areas. In CMA 153, which includes Columbus, Verizon and ALLTEL control 104 MHz of mobile phone spectrum. Despite this high concentration in the mobile telephone market in the Columbus area, Verizon has sought to avoid a divestiture there. The reason is that the Columbus area is a very attractive location for mobile telephone service.

7. Muscogee county, covering the portion of Columbus in Georgia, is a populous (approximately 190,000 residents), fast-growing and relatively prosperous county with a high population density. The per capita personal income exceeds the average in Georgia, and is far higher than the average in Alabama. Income is growing faster than average income in Georgia, Alabama and the United States as a whole. It is particularly attractive for mobile phone use. CMA 153 includes Fort Benning, a community of 100,000 military members and their families. The other CMAs listed above surround the Columbus CMA. None of them is as populous or as attractive a location as the Muscogee County portion of the Columbus CMA, but without the surrounding CMAs, the attractiveness of CMA 153 is diminished. And, of course, the surrounding CMAs without Columbus would be difficult to serve.

8. The need to provide a fair opportunity to succeed is particularly necessary given the current economic climate. Credit is tight, and consumers are resistant to spending of all kinds. Prospective purchasers (other than the major carriers, who as purchasers would only further increase concentration) will have a difficult time making the authorized divestitures in Georgia and Alabama work economically. Excluding the Columbus area from any divestiture will make it that much harder to restore competition. For these reasons, PSC requests that the Commission not allow Verizon to acquire ALLTEL unless it divests the overlapping properties in CMA 153, CMA 311 (AL 5), CMA 314 (AL 8), and CMA 375 (GA 5), as well as in the areas designated in the two Verizon letters.

9. In this regard, Attachment 2 to the August 19, 2008 Verizon/ALLTEL Joint Opposition provides an “analysis” of certain of the markets for which the Rural Carriers have requested divestiture. In particular, Attachment 2 discusses CMA 153, CMA 314, and CMA 376. The other CMAs set forth in Rural Carriers’ Petition are not addressed in Attachment 2. Verizon/ALLTEL claims that the results of the Attachment 2 analysis “demonstrate that, in every one of these counties, it will face substantial competition.” However, Attachment 2 does not contain an analysis of the HHI impact or market share analysis. Instead, the analysis is merely a recital of the other carriers in the market. Even under Verizon/ALLTEL’s skewed and self-serving analysis, they concede that the need for additional review is triggered for three counties in CMA153. Joint Opposition at p. 32. And in the case of CMAs 314 and 376, it appears that the analysis contains errors. In particular:

10. For CMA 314, Attachment 2 states that “the Commission’s own data shows that at least four carriers are operational throughout most of the area, which correlates with applicants’ data showing five operational carriers including Verizon Wireless and ALLTEL.” But when Verizon Wireless and ALLTEL are subtracted, this leaves only *three* operational carriers to compete with the merged entity. Three competitors is hardly robust competition. Given the fact that the merged entity will *far* exceed the 95 MHz guidepost in this market (at least 124 MHz), and the high market concentration factors discussed above, Verizon should have been required to divest CMA 314, CMA 153 and the other markets identified in the Rural Carriers’ Petition. These issues were raised in the Petition and related reply comments, but were not adequately addressed by the Approval Order.

11. Unfortunately, the *Approval Order* modified the 95 MHz spectrum concentration standard that the Commission had used for other recent mega-transactions¹⁴, by including consideration of Broadband Radio Service (BRS) spectrum in the concentration analysis.¹⁵ It is respectfully submitted that because BRS spectrum was borne of a legacy of *fixed* wireless services, this spectrum has not been deployed as a mobile service offering, and it does not appear that equipment is readily available for mobility in this band. Therefore, the modification of the spectrum concentration standard is premature, and should not be applied to the captioned transaction. Moreover, the Commission should give greater consideration to market share and the viability of the

¹⁴ *AT&T-Dobson Order*, at Para. No. 40; *ALLTEL-Midwest Order*, at Para. No. 36; *ALLTEL-WWC Order*, at Para. No. 46; *Cingular-AT&T Wireless Order*, at Para. No. 106.

¹⁵ Approval Order at para. 65.

systems to be divested, as shown in the Petition. Otherwise, in the states of Georgia and Alabama at least, there is a strong likelihood that the divested systems (made up of low population density areas with few population centers to provide economies of scale) will ultimately fail, and the customers will end up going to Verizon in the end. Nothing will have been accomplished to protect the competitive environment.

III. The Commission Should Require That Verizon/ALLTEL Ensure Rural Telecom Carriers Have A Realistic Opportunity To Acquire Divested Operations.

12. Consistent with the goal of requiring divestiture so as to prevent a lessening of competition, and to further Congress' stated goal of encouraging rural telephone company participation in the provision of wireless services,¹⁶ the Petition urged the Commission to require that any divestiture of ALLTEL cellular systems be accomplished pursuant to procedures that would ensure a realistic opportunity for rural carriers to acquire the divested operations in and around their telephone service areas. In this regard, the Petition requested that the divestitures should be done in reasonably small geographic areas (and in particular, CMAs). In addition, Verizon should be required to accept and give due consideration to bids from all interested entities.

13. Unfortunately, the *Approval Order* failed to give adequate consideration to these arguments, and did not impose adequate conditions. As a result, rural carriers such as PSC have not had a realistic opportunity to successfully bid on the divested properties. Because Verizon/ALLTEL was not required to divest enough population centers in

¹⁶ See 47 U.S.C. §309(j).

Georgia and Alabama to make for commercially viable operations, the markets to be divested did not come close to approaching the bid values that Verizon Wireless appears to be expecting from bidders. Instead, it appears that Verizon Wireless is not discounting the divested properties to reflect that Verizon is retaining the “plum” adjoining markets, and is divesting mostly higher cost, lower population systems. The only entities that can realistically bid under such circumstances are the other giant carriers such as AT&T, which can operate the divested markets in conjunction with their own existing cellular systems in adjoining areas. Under this approach, rural carriers have not truly been given a realistic chance to successfully compete for the divested systems.

IV. The Commission Should Condition Any Grant On The Provision Of 3G And Other Broadband Roaming Service

14. The *Approval Order* required Verizon to honor certain *existing* ALLTEL and Verizon roaming agreements, for up to four years.¹⁷ This is certainly a step in the right direction. However, as the Petition argued (at pp. 11-15), Verizon Wireless should be required to enter into intercarrier roaming agreements with *any* rural carriers offering wireless services, at prices that are just, reasonable, and non-discriminatory, as required by the Commission’s decision in *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, *WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rule Making*, FCC 07-143, 22 FCC Rcd. 15,817 (rel. August 16, 2007) (“*CMRS Roaming Order*”). This is especially important since, with the acquisition of one of its largest competitors and the achievement of largely ubiquitous coverage as a result, Verizon Wireless will have little incentive to voluntarily offer fair and reasonable

¹⁷ Approval Order at para. 178.

roaming terms. By restricting the roaming protection provision to existing agreements, the *Approval Order* fails to protect the numerous rural carriers that are just now constructing and operating competing wireless operations using spectrum won at one of the Commission's auctions held over the past few years.

15. PSC recognizes that the provision of 3G data and voice and other broadband services on an automatic roaming basis is presently pending before the Commission in the Further Notice of Proposed Rulemaking portion of the *CMRS Roaming Order*. Nevertheless, it is respectfully submitted that the provision of such 3G and other broadband services on an automatic roaming basis is of such a critical nature to the development and preservation of competitive markets for the provision of wireless service that the Commission should condition any approval of the instant merger on requiring Verizon Wireless to provide 3G and other broadband services (including 3G data) on an automatic roaming basis to promote truly competitive markets in the provision of such services.

16. Verizon Wireless should not be allowed to leverage its national coverage advantage over smaller carriers to suppress competition in the provision of 3G or other broadband services on either a local or a roaming basis. Today, if a rural carrier cannot get a roaming agreement with Verizon, then it can go to ALLTEL (and *vice versa*). Once these giant companies merge, they will have a near monopoly on roaming in many areas, with the power to eliminate competition through price increases or by simply not entering into or renewing roaming agreements. With the approval of this merger, Verizon

Wireless will be able to offer 3G and other broadband services over the facilities of ALLTEL, and those customers will be able to obtain 3G services anywhere within the Verizon Wireless network. Given these facts, denying 3G voice or data, or other broadband automatic roaming service to rural carrier customers outside their coverage area will enable Verizon Wireless to leverage regulated facilities used in the provision of local service in the state to capture customers that would otherwise obtain service from a rural wireless carrier. This would be an impermissible use of regulated facilities to lessen or suppress competition in the wireless industry sector. It is vital that the customers of small, rural carriers be able to utilize 3G data and other advanced services when traveling outside of their service provider's coverage area. Otherwise, the wireless marketplace will be whittled down to two or three nationwide carriers, creating an oligopoly with little incentive to provide wireless coverage to truly rural areas.

17. Similarly, the Commission should require Verizon Wireless to offer roaming service to a rural carrier within its wireless service area (i.e., "home" or "in-market" roaming), if that carrier has not yet fully deployed its wireless system, or implemented all of the services offered post-merger by Verizon Wireless. While the Commission has not yet seen fit to make this a regular component of its roaming policies and regulations, it is respectfully submitted that this requirement would be in the public interest in the context of this transaction, since the post-merger entity will be so dominant (especially in several predominantly rural states).

18. All of these arguments were presented to the Commission in the Petition and by other commenters. However, it is respectfully submitted that the Commission failed to give proper weight to these considerations, and therefore failed to adequately protect competition and service to rural subscribers.

V. The Commission Should Reconsider Its Decision Not To Condition Any Grant On The Elimination Of Handset Access Obstacles For Smaller Carriers

19. The Petition pointed out that Commission must ensure that proactive steps are taken to prevent the post-merger entity from exacerbating an already difficult handset availability situation for small and rural carriers. The typical handset issue occurs where a national carrier like Verizon enters into an exclusivity agreement for a specific handset line or a series of handsets. Available information indicates that in many instances, the big carrier has not consumed the resulting exclusive supply. The result of the exclusivity arrangement is that small and rural carriers are unable to obtain high quality, technologically sophisticated handsets to offer to their customers. Typically, the smaller carriers serve mostly rural areas with great customer service, but with limited handset selection and products. The Petition pointed out that the Commission's recent HAC orders reflect that there are carriers who are struggling to obtain handsets in models and in quantities necessary to operate their businesses.¹⁸ This problem is due in part to the dynamic of exclusive handset arrangements and locked handsets.

20. Unfortunately, the *Approval Order* failed to take the opportunity to address this issue in the context of the Verizon-ALLTEL merger, instead "punting" it for

¹⁸ Petition at p. 15.

resolution in the proceeding considering the Rural Cellular Association (RCA) Petition for Rulemaking addressing the same subject.¹⁹ PSC applauds the Commission for giving the RCA petition serious consideration. However, the Commission is well aware that it will take months if not more than a year for the RCA petition to result in a Notice of Proposed Rulemaking and eventual final rules. By that time, considerable damage to smaller carriers will have occurred due to the handset exclusivity issue. Therefore, the public interest would best be served if the Commission preserved the status quo pending conclusion for the RCA proceeding, by placing an interim ban on handset exclusivity arrangements by the merged entity. This would constitute a less restrictive alternative than making small and rural carriers wait until the conclusion of a two-step rulemaking process. In other instances, the Commission has imposed interim conditions in anticipation of the outcome of a pending rulemaking, in order to prevent foreseeable harms. *See In the Matter of Applications of ALLTEL Corporation, Transferor, and Atlantis Holdings LLC, Transferee For Consent To Transfer Control of Licenses, Leases and Authorizations*, WT Docket No. 07-128 , FCC 07-185, 22 FCC Rcd 19517, released October 26, 2007, at paragraph 9.

VI. The Commission Should Hold the Merger in Abeyance Pending Final Consideration of Public Comment on the DOJ Settlement with Verizon, As Required By the Tunney Act.

21. On October 30, 2008, the Department of Justice (DOJ) filed a lawsuit against the proposed merger, based on its findings of the potential for anticompetitive harms. On the same day, the DOJ filed a proposed settlement, pursuant to which Verizon/ALLTEL

¹⁹ Approval Order at para. 185.

would have to divest certain markets and take other measures to guard against the anticompetitive harms alleged in the DOJ lawsuit.

22. Under the Tunney Act, whenever the Justice Department proposes to settle an antitrust case, the court – not the Justice Department, and not the merger parties – must determine whether the proposed settlement is “in the public interest.”²⁰

To set in motion this judicial review process, the Tunney Act directs that, before an antitrust consent decree may be approved, the Justice Department must explain the decree in something called a “competitive impact statement,” which is published publicly.²¹

Then, interested persons may submit comments on the proposed decree, to which the Justice Department itself typically responds.²² At that point, the Justice Department may ask the court to approve the proposed consent decree. In connection with these proceedings, the Tunney Act court may hold hearings to receive evidence from government officials or experts witnesses, or appoint a special master or outside consultants to aid its public interest determination.²³ The court may also permit interested parties to participate.²⁴

23. The Tunney Act requires that the public be given 60 days to comment on the proposed settlement with Verizon/ALLTEL. Since the proposed settlement was not published in the Federal Register until November 12, 2008, this 60 day period does not

²⁰ Antitrust Procedures and Penalties Act, 15 U.S.C.S. §§ 16 (b)-(h) (the Tunney Act).

²¹ 15 U.S.C. § 16(b) & (c).

²² 15 U.S.C. § 16(b) & (d).

²³ 15 U.S.C. § 16(f) (1) & (2).

²⁴ 15 U.S.C. §16(f) (3). The Act’s provisions permitting interested persons to participate in the public interest determination are intended to go beyond the court’s authority to grant intervention under Rule 24 of the Federal Rules of Civil Procedure. 9 Federal Antitrust History at 6536.

expire until January 12, 2009; and thereafter, DOJ and the Court will require time to consider the public's views on the settlement proposal, and determine if the settlement would be in the public interest. Otherwise, the public comment procedure would be a meaningless "box checking" exercise, a result that Congress did not intend in enacting the Tunney Act. Because the Tunney Act process has not been completed, and could affect the structure of the proposed merger, it is respectfully submitted that the Commission should hold any approval in abeyance, until this process is concluded. The Commission should not pre-judge the merits of the merger without the completion of this important additional step.

Conclusion

Based on the foregoing, it is necessary to either rescind the grant of approval for the proposed merger, or to impose the following conditions on the transaction: (1) Require that the ALLTEL cellular properties be divested, where overlapped by Verizon cellular operations and/or where the merger would result in an excessive concentration of spectrum, including those additional markets described in the Petition, due to considerations of spectrum accumulation and dominant market share, including those markets shown herein ; (2) require that the merged entity offer reasonable roaming rates and terms to rural wireless carriers; (3) require that the merged entity offer 3G voice and data and other broadband roaming on reasonable terms to rural wireless carriers, on both a foreign market and on an "in-market" or "home roaming" basis; and (5) require that the

merged entity take Commission-verified steps to ensure handset access for smaller carriers.

Respectfully submitted,

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Filed: December 10, 2008

CERTIFICATE OF SERVICE

I hereby certify that I am an attorney with the law offices of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP and that on December 10, 2008 I caused to be sent by electronic mail (e-mail), a copy of the foregoing "**Petition for Reconsideration**" to the following:

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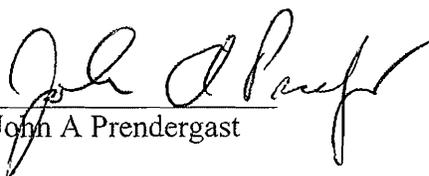
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