Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of	)	
	)	
ATLANTIS HOLDINGS LLC, Transferor	)	
	)	WT Docket No. 08-95
and	)	
	)	
CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS, Transferee	)	File Nos. 0003463892, *et al*.
	)	
for Consent to the Transfer of Control of FCC Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act	)	

To: Wireless Telecommunications Bureau

REPLY TO OPPOSITION TO PETITIONS FOR RECONSIDERATION

The Rural Telecommunications Group, Inc. ("RTG"), by its attorneys and pursuant to Section 1.106(h) of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), hereby submits this reply to the Joint Opposition to Petitions for Reconsideration ("*Joint Opposition*")[1] filed in the above-captioned proceeding.

The Applicants mistakenly argue that the petitions provide no basis for reconsideration of the Commission's Memorandum Opinion and Order and Declaratory Ruling ("*MO&O&DR*")[2] because they "fail[] to rely on new facts or changed

[1] Joint Opposition to Petitions for Reconsideration of Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") and Atlantis Holdings LLC ("Atlantis Holdings")(together, the "Applicants"), WT Docket No. 08-95 (filed December 22, 2008) ("*Joint Opposition*").

[2] *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-225, WT Docket No. 08-95 (rel. Nov. 10, 2008) ("*MO&O&DR*").

circumstances."[3] In support of this argument, the Applicants erroneously cite to section 1.106(b)(3) of the FCC's Rules[4] which applies only to a Commission order denying an application for review. As Applicants recognize, the FCC may entertain any petition for reconsideration if the Commission identifies any "material error or omission in the original order." [5] As discussed further herein, RTG's Petition clearly identifies numerous examples of "material errors" and/or "omissions" in the *MO&O&DR*.[6]

In addition, the FCC may always grant a petition for reconsideration where it "determined that consideration of the facts relied on is required in the public interest."[7] As discussed throughout RTG's Petition, reconsideration of the *MO&O&DR* is clearly in the public interest.[8]

The Commission's Failure to Address the Need for Consistent Treatment of ALLTEL's GSM and CDMA Networks Post-Merger is a Material Error That Must be Corrected

RTG and the Applicants both agree that the Commission should not be picking the winners and losers in the marketplace for competing air-interface technologies. However, by neglecting to apply merger-specific roaming conditions equally to both the GSM and CDMA networks of ALLTEL (where both networks operate in tandem in the same geographic markets), the Commission is giving *de facto* preference to one air-

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[3] *See Joint Opposition* at p. 2.

[4] *Id*.

[5] *In the Matter of Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Order on Reconsideration, FCC 05-88, WT Docket No. 04-70 (released April 29, 2005), ¶ 8.

[6] *See generally*, Petition for Reconsideration of the Rural Telecommunications Group, Inc., WT Docket No. 08-95 (filed December 10, 2008)("RTG Petition").

[7] 47 C.F.R. Section 1.106(c)(2).

[8] RTG Petition at 6-7, 17.

interface technology (CDMA) over another (GSM), and failure to do so constitutes material error. In the *Joint Opposition*, the Applicants themselves merely reiterate the same hollow arguments they proffered in earlier filings regarding how long the ALLTEL GSM roaming network will remain operational post-merger, and which mobile operators will be allowed to access that roaming network.

The simple fact of the matter is that, from a purely technical point of view, all domestic GSM/UMTS operators are able to roam on the GSM network of ALLTEL, both today and in the future, *if* they are allowed access. Conversely, those same GSM/UMTS operators will be *technically incapable* of roaming on the ALLTEL CDMA network. Yet another indisputable fact is that Verizon has not offered to operate the ALLTEL GSM roaming network for a set period of time, nor has it agreed to enter into any new GSM roaming agreements post-merger. Following the merger of Verizon and ALLTEL, should any CDMA operator request roaming access, Verizon will be required to "facilitate reasonable roaming requests by carriers on behalf of wireless customers."[9] The Commission has ruled that such roaming requests are in the public interest.[10] However, a similar request for roaming access by a GSM or UMTS operator may be ignored by Verizon for several reasons. First and foremost, there is absolutely no guarantee that the ALLTEL GSM roaming network will exist post-merger for any identifiable period of time, and it will almost certainly not remain operational by the time LTE becomes ubiquitous in former ALLTEL markets. Second, Verizon will argue that

[9] *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143, WT Docket No. 05-265 (released August 16, 2007), ¶ 28, ("Roaming Order").

[10] *Id*

only the CDMA network is eligible for roaming access, and that GSM/UMTS operators must either wait for LTE to become a reality or convert their GSM/UMTS networks to CDMA, which is both economically and logistically impossible. It is infinitely more rational, and in the public interest, to require Verizon to offer GSM roaming for a fixed period of time or until LTE become operational.

For all practical purposes, it is completely irrelevant whether AT&T, T-Mobile or any other carrier operates a GSM network or owns licenses in ALLTEL markets[11], or whether the ALLTEL GSM wholesale roaming business "generates significant revenue."[12] What is absolutely relevant is the fact that unless the Commission imposes conditions specific to the ALLTEL GSM roaming network on Verizon, GSM/UMTS operators, and especially *any and all new market entrants* utilizing GSM/UMTS, will not have the same roaming opportunity afforded to CDMA operators. This equal treatment exists today with ALLTEL as an independent operator. It will not exist once Verizon assumes control, especially if there are no specific GSM roaming conditions.

After the release of the *MO&O&DR*, Verizon announced that it would deploy LTE starting in 2009.[13] If this aggressive deployment schedule is in fact true, then Verizon should have no problem whatsoever supporting GSM roaming for any operator in the short term, or at least until the unifying air-interface technology of LTE takes hold throughout the markets of regional, small and rural operators. However, Verizon's complete unwillingness to make any legally binding commitment whatsoever with

[11] *Joint Opposition* at p. 6.

[12] *Id*.

[13] Public announcement by Verizon Chief Technology Officer, Dick Lynch, *Cisco Systems' C-Scape Conference*, San Jose, CA (December 2008).

regards to GSM roaming is consistent with its likely desire to shut down the GSM network as soon as possible – effectively abandoning GSM users who do not have a roaming agreement and making more operators dependent upon Verizon's CDMA network for either roaming access (at rates that do NOT exist in contract today) or retail service. The FCC's failure to act to address the public interest harms resulting from this differing treatment constitutes material error which must be addressed on reconsideration.

The Roaming Conditions Adopted by the Majority of the Commissioners Are Not Reflected in the *MO&O&DR*

The Applicants in their *Joint Opposition* argue that there is no confusion in the roaming conditions section of the *MO&O&DR* and that the words "speak for themselves and are not in any way ambiguous."[14] Yet interestingly enough, the majority of Commissioners all attest, in unison and through their own published comments adopted with the *MO&O&DR*, that Verizon is required to honor roaming agreements/contracts for at least four years.[15] Unfortunately, the *MO&O&DR* does not contain language that accurately reflects the consensus opinion of not just RTG, Leap and numerous other affected mobile operators, but most importantly, three of the five FCC Commissioners! Clearly, any order that contains text that is flatly inconsistent with the understanding of the majority of Commissioners as to what was actually adopted constitutes material error which must be reconsidered. RTG and the Applicants both agree that RTG (along with other interested parties to the proceeding) originally lobbied the FCC to mandate that Verizon honor roaming agreements *in their entirety* for a period of at least seven years. This is not disputed. Nonetheless, in an effort to reach a compromise, it was mutually

[14] *Joint Opposition* at 7.

[15] RTG Petition at 11; see also Statements by Commissioners Adelstein, Copps and Tate, *MO&O&DR*, WT 08-95 (released November 10, 2008).

agreed in the waning hours before the Commission's open meeting on November 4, 2008 that Verizon would be required to honor roaming agreements/contracts *in their entirety* for at least four years. This commitment to honor *roaming agreements/contracts* in their entirety for a period of four years goes well beyond the raising of mere *roaming rates*. The *MO&O&DR* must accordingly be amended upon reconsideration to reflect what was actually adopted by the Commission.

The Commission Erred in Including BRS Spectrum in its Spectrum Screen

The Applicants fail to rebut RTG's showing that the Commission erred in its *MO&O&DR* in including certain Broadband Radio Service ("BRS") spectrum in its spectrum screen applied to the transaction.[16] Applicants effectively concede that the subject BRS spectrum is years away from commercial mobile deployment. In its Petition, RTG argued that licenses in the vast majority of the transitional BTAs are unlikely to be constructed for commercial mobile use until the May 1, 2011 substantial service deadline. Applicants concede that New Clearwire's wireless broadband network will not even cover half of the U.S. population "in roughly thirty-six months."[17] Accordingly, the basis for the Commission's finding that BRS spectrum should be included in the spectrum screen was in error. Inclusion of such spectrum in the screen is premature and the Commission should reconsider its application of the spectrum screen to this transaction.

[16] Applicants incorrectly argue that RTG merely "repeat and restate" arguments raised previously and rejected by the Commission. In its Petition, RTG refutes an argument newly asserted by the Commission in its *MO&O&DR* that the inclusion of BRS spectrum in the screen is warranted due to "significant additional progress" which has made since release of the *AT&T-Dobson Order* in completing the transition of BRS spectrum to the new band plan.

[17] *Joint Opposition* at p. 11.

The Commission Failed to Properly Consider The Merger Specific Harm That Will Occur if an Exclusive Handset Condition Is Not Placed on Verizon.

In its *Joint Opposition*, Verizon argues that it should not be singled out by the Commission to have exclusive handset conditions imposed on it. It argues that saddling the largest wireless provider in the United States with an obligation imposed on no other carrier would hamper its ability to compete in the marketplace.[18] RTG submits that this handset exclusivity obligation should be placed on all U.S. carriers including Verizon as set forth in the Rural Cellular Association's Petition for Rulemaking.[19] However, the Commission need not wait on the outcome of that rulemaking before reconsidering whether a specific condition barring handset exclusivity contracts should be placed on Verizon as a result of the merger. The result of the handset exclusivity rulemaking has no bearing on the market dominance that Verizon will wield once the merger occurs.[20] Given Verizon's market dominance post-merger, it is appropriate at this point in time for the Commission to impose merger specific conditions that will prevent harm to the public interest as a result of the Alltel/Verizon merger whereby Verizon becomes the largest U.S. wireless carrier.[21]

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[18] *Joint Opposition* at p. 13.

[19] *Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, Order,* DA 08-2576 (rel. Nov. 26, 2008).

[20] Verizon correctly notes that RCA and CTIA sought and obtained an extension of time for the Comment and Reply Comment dates in the proceeding in order to develop consensus recommendations through ongoing discussions. To date, there has been no announcement on the progress of those discussions and there is likely not going to be a near term resolution of this issue. While CTIA represents the interests of the larger U.S. wireless carriers, it cannot force the larger carriers to agree to work with the small, rural carriers. Given past history, RTG is doubtful that anything will come of these discussions; in the end, all that is likely to occur is a delay in the Commission being able to make timely progress on the handset exclusivity issue.

[21] The Commission reiterates in the *MO&O&DR* that "[its] public interest authority enables [it] to rely upon [its] extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits. (*cite omitted*) Despite this broad authority, the

As set forth in RTG's Petition, the merger specific harms that warrant this condition being placed specifically on Verizon prior to the completion of the rulemaking proceeding include Verizon's monopsony power to purchase handsets and the disparity in purchasing power between Verizon and smaller wireless providers resulting in an unlevel playing field that denies rural consumers the ability to access popular handsets.[22] While a future rulemaking may eventually address the exclusive handset agreements issue from an industry-wide perspective, immediate action is needed to prohibit Verizon from using its monopsony power to continue to enter into exclusive handset agreements. By placing this condition on Verizon, the Commission will ensure that the public interest is served and that all Americans, including those residing in rural America, will have access to popular handsets.

Verizon argues without any support that imposing a prohibition on handset exclusivity on it and it alone will be contrary to the public interest.[23] It never states how such a requirement will harm the public interest. In reality, the public could care less if competitors sell the same phones. In fact, the public would be incredibly happy if it could get an iPhone to work on the Verizon network or any other network for that matter! What Verizon means to say is that its own self interest would be harmed if it could not have exclusive handsets designed to only work on its network. The bottom line is that Verizon's interest and the public's interest are not in sync on this issue and for Verizon to

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Commission has held that it will impose conditions only to remedy harms that arise from the transaction *(i.e.,* transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes." *MO&O&DR* at para.29. Verizon's sheer size and ability to control the handset marketplace in the United States warrants the Commission imposing a transaction specific condition on the merger. The Commission's public interest authority, *inter alia,* allows it to impose a bar on exclusive handset contracts with respect to Verizon.

[22] RTG Petition pp. 16-18.

[23] *Joint Opposition* at p. 13.

make its unsupported claim that a handset exclusivity condition is contrary to the public interest is simply false.

For the foregoing reasons, RTG respectfully requests that the Commission reexamine its position with respect to application of its spectrum screen, as well as its failure to place adequate conditions on Verizon as they relate to roaming, the upkeep of the ALLTEL GSM network, and handset exclusivity, and correct the material errors and omissions contained in the *MO&O&DR* consistent herewith.

Respectfully submitted,

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December 29, 2008

CERTIFICATE OF SERVICE

I, Linda L. Braboy, of Bennet & Bennet, PLLC, 4350 East West Highway, Suite 201, Bethesda, MD 20814, hereby certify that a copy of the foregoing Reply to Opposition to Petitions for Reconsideration of the Rural Telecommunications Group, Inc. was served on December 29, 2008, by first-class United States mail, postage prepaid, on those listed below:

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