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Federal Communications Commission
Office of the Secretary

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

In the Matter of)	WT Docket No. 08-95
)	
Applications of Cellco Partnership d/b/a)	File Nos. 0003463892, <i>et al.</i> , ITC-T/C-
Verizon Wireless and Atlantis Holdings LLC)	20080613-00270, <i>et al.</i>
)	
For Consent To Transfer Control of Licenses,)	
Authorizations, and Spectrum Manager and)	
<i>De Facto</i> Transfer Leasing Arrangements)	
)	
and)	
)	File Nos. ISP-PDR-20080613-00012
Petitions for Declaratory Ruling that the)	
Transaction is Consistent with Section)	
310(b)(4) of the Communications Act)	

To: The Secretary
Office of the Secretary
Federal Communications Commission

REPLY TO JOINT OPPOSITION

Chatham Avalon Park Community Council ("Petitioner" or "CAPCC"), by its attorneys, hereby replies to the Joint Opposition of Atlantis Holdings, LLC and Cellco Partnership d/b/a Verizon Wireless (together, "Verizon Wireless") to seven petitions for reconsideration, including that of CAPCC, in the above-captioned proceeding.¹

The Joint Opposition fails to respond to the arguments presented in CAPCC's Petition concerning (1) the Commission's failure to impose a divestiture condition that includes a right of first negotiation for socially disadvantaged businesses ("SDBs") and (2) the Commission's

¹ See *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 (rel. Nov. 10, 2008) [hereinafter "*Verizon-Alltel Order*"].

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decision to allow Verizon, contrary to settled precedent, to demonstrate its compliance with foreign ownership limitations by conclusively presuming citizenship from the mailing addresses of record for the stockholders of Verizon Wireless's partners. As CAPCC has pointed out, this special rule applicable only to Verizon Wireless means that the Commission applies to Verizon Wireless a substantively different standard for what constitutes foreign or non-WTO ownership under Section 310(b) of the Communications Act than it applies to socially disadvantaged businesses and Verizon Wireless's competitors. Instead of addressing this discrepancy, the Joint Opposition merely repeats statements from the *Verizon-Alltel Order* that also fail to address CAPCC's arguments.²

There is no justification for the Commission to give Verizon Wireless its own special interpretation of Section 310(b). The failure of the FCC to apply the law consistently and equitably violates the Commission's legal obligations and makes bad public policy. If the Commission required Verizon Wireless to follow the same interpretation of Section 310(b) as socially disadvantaged businesses, Verizon Wireless quite likely would be supporting CAPCC's position that the Commission's construction of Section 310(b) unnecessarily denies access to capital to other applicants.³

I. Verizon Wireless Did Not Contradict CAPCC's Showing That the Commission Failed to Justify Its Rejection of CAPCC's Proposed Divestiture Condition with a Right of First Negotiation for Socially Disadvantaged Businesses.

CAPCC's Petition for Reconsideration explained that in the *Verizon-Alltel Order*, the Commission failed to articulate any basis for rejecting CAPCC's amply supported proposal to

² Joint Opposition at 16-17 (citing *Verizon-Alltel Order*, ¶¶ 228-29).

³ The Joint Opposition argues that CAPCC's Petition repeats arguments from its Petition to Deny, see Joint Opposition at 17, but passes over CAPCC's showing that the Commission in the *Verizon-Alltel Order* failed to provide any reasoned explanation for its rejection. CAPCC Petition for Reconsideration at 2.

impose a condition granting a right of first negotiation for divested Verizon-Alltel properties to SDBs.⁴ The Joint Opposition did not (and could not) demonstrate otherwise, given that the *Verizon-Alltel Order* has no stated reason for denying the condition.⁵ Instead, the Commission merely implies a preference for reliance on market forces. Given that, as CAPCC pointed out, the Commission recently has imposed similar conditions in similar transactions, the Commission has an obligation to explain why it declined to impose such a condition here.⁶

II. Verizon Wireless Did Not Contradict CAPCC's Demonstration That the Commission Erred by Allowing Verizon, Without Supporting Analysis and Contrary to Precedent, Conclusively to Presume Citizenship from Shareholder Addresses in its Section 310(b) Showing.

In its Petition for Reconsideration, CAPCC pointed out that the Commission acted not only acted arbitrarily and capriciously but also contrary to settled law when, without providing a reasoned analysis, it allowed Verizon Wireless conclusively to presume citizenship based on registered and beneficial owners' addresses of record.⁷ The Joint Opposition does not show otherwise, nor does it refute (or even address) CAPCC's showing that, in so doing, the Commission applied an entirely different and far more liberal definition of what constitutes foreign ownership under Section 310(b) than it applies to small and socially disadvantaged

⁴ CAPCC Petition for Reconsideration at 3-6.

⁵ See *Verizon-Alltel Order*, ¶ 162.

⁶ The Commission's statement, quoted by Verizon Wireless, that it would consider public interest issues when assets are divested says only that the Commission will follow normal procedures – an elaborate way of saying “no” without explanation. At the application stage, the Commission may not consider whether the public interest would be better served by an assignee other than the one proffered. Thus, this examination in no way addresses the policy concerns underlying the condition proposed by CAPCC.

⁷ CAPCC Petition for Reconsideration at 7-24; see also *Ramaprakash v. FAA*, 346 F.3d 1121, 1124-25 (D.C. Cir. 2003) (“Agencies are free to change course as their expertise and experience may suggest or require, but when they do so they must provide a ‘reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.’” (quoting *Greater Boston Television Corp. v. FCC*, 44 F.2d 841, 852 (D.C. Cir. 1970))).

businesses and other entities that compete with Verizon Wireless's media and telecommunications businesses.

A. The Commission's Approval of Verizon Wireless's Foreign Ownership Showing Contravened Settled Precedent.

It is long-settled precedent that applicants may not presume citizenship of shareholders from the mailing addresses of their owners, as recently reaffirmed in *América Móvil*;⁸ and, if citizenship of shareholders cannot otherwise be reliably determined, an applicant with widely dispersed ownership interests must conduct a valid sample survey. In permitting Verizon Wireless to presume shareholder citizenship from the mailing address of the immediate shareholder below the nominee, the Commission acted arbitrarily and capriciously and contrary to law, because that approach treats as entirely U.S.-owned and controlled stock interests in Verizon Wireless that settled law applied to all other applicants would treat as entirely or substantially foreign owned and controlled and/or non-WTO.

Under the definition of "foreign ownership" applied to all other applicants, the citizenship of the first stockholder below a pure nominee – what Verizon Wireless calls the "beneficial owner" – would be the starting point for the analysis, not the endpoint. In the assessment of "beneficial ownership" required by the FCC, other applicants must assess *ultimate* beneficial ownership and, regardless of the citizenship of the entity holding an interest immediately below the nominee, determine who *ultimately* controls and owns the stock interest,

⁸ See *In re Verizon Commc'ns Inc. and América Móvil, S.A. DE C.V.*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195, 6223 ¶ 59 (2007) ("[W]e decline, based on the record in this proceeding, to change the Commission's precedent by accepting street addresses of stockholders and banks as an indicator of citizenship of the beneficial owners.") [hereinafter "*América Móvil*"].

with partial foreign and/or non-WTO interests reflected in the computation.⁹ For example, the Commission treats stock interests directly or indirectly held by U.S. entities as foreign and/or non-WTO-controlled or owned if the U.S. entities have foreign and/or non-WTO ownership or control parties.¹⁰ In some instances, even a minor foreign ownership interest (for example, a non-insulated foreign limited partnership interest) may result in a U.S. entity with overwhelming U.S. ownership nevertheless being treated as a foreign-controlled entity.¹¹ Yet, many U.S. states require that all entities organized under their laws, including entities whose ultimate beneficial ownership and control are foreign and non-WTO, must have a registered address within the state.¹² All of those entities count for Verizon Wireless as wholly U.S.-owned and controlled, but for other applicants are evaluated according to ultimate beneficial ownership and control. Only through a valid sample survey can Verizon Wireless analyze the foreign ownership status of its shareholders under the definition of foreign ownership applicable to all other applicants.

B. The Joint Opposition Does Not Show That the Commission Properly Distinguished *América Móvil*.

CAPCC's Petition for Reconsideration takes issue with the inconsistency between the *Verizon-Alltel Order* and the Commission's recent decision in *América Móvil*, in which the

⁹ See *Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses*, 19 FCC Rcd 22612, 22624-31 (IB 2004) [hereinafter "*Foreign Ownership Guidelines*"]; see, e.g., Instructions to FCC Form 315, Section IV.H ("The Commission may also deny a construction permit or station license to a licensee directly or indirectly controlled by another entity of which more than 25% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative, or another entity organized under the laws of a foreign country. . . . The voting interests held by aliens in a licensee through intervening domestically organized entities are determined in accordance with the multiplier guidelines [for determining attributable interests held through multiple levels.]").

¹⁰ See *id.* at 22627-28.

¹¹ See *id.* at 22630.

¹² See, e.g., 8 Del. Code § 131(a) ("Every corporation shall have and maintain in this State a registered office which may, but need not be, the same as its place of business."); Fla. Stat. § 607.0501(1)(a); Minn. Stat. § 302A.121; Tex. Bus. Orgs. Code Ann. § 5.201(a)(2).

Commission explicitly rejected the use of shareholder addresses as a basis for assessing ownership under Section 310(b).¹³ The Joint Opposition denies the inconsistency without explanation, quotes the same passages that CAPCC quoted from the *Verizon-Alltel Order*, and provides no further analysis.¹⁴ This lack of analysis reflects that *América Móvil* and the *Verizon-Alltel Order* are irreconcilable.

As explained in CAPCC's Petition for Reconsideration, the *Verizon-Alltel Order* entirely failed to show that Verizon's Section 310(b)(4) showing did anything other than presume stockholder citizenship from stockholder addresses, the very presumption that the Commission found insufficient in *América Móvil*.¹⁵ As CAPCC pointed out, Verizon Wireless's description of its methodology shows that it relied on the mailing address – the “registered address” – that the first tier owner gave to the nominee holder. That is what Verizon Wireless means by the “registered address” of the “beneficial owner.” Verizon Wireless did not deny that interpretation.¹⁶ Likewise, the *Verizon-Alltel Order* does not advance any other interpretation of Verizon's methodology.¹⁷ Indeed, the brief paragraphs that Verizon incorporated from its RCC showing do not allow any other interpretation.¹⁸

At best, the *Verizon-Alltel Order* points out that, for some shares, Verizon got a third party to go a single step above pure nominee holders and then make a conclusive presumption of

¹³ See CAPCC Petition for Reconsideration at 13-16; *América Móvil* at 6223 ¶ 59.

¹⁴ See Joint Opposition at 16-17 (quoting *Verizon-Alltel Order*, ¶ 228).

¹⁵ See CAPCC Petition for Reconsideration at 13-16.

¹⁶ See, e.g., Celco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, WT Docket No. 08-95, *Joint Opposition to Petition to Deny and Comments*, at 90 (filed Aug. 19, 2008).

¹⁷ See *Verizon-Alltel Order*, ¶ 228.

¹⁸ See Merger Applications, Exhibit 1, at n.123 (citing Letter from Nancy J. Victory, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-208, DA 07-4192 (Apr. 8, 2008)).

citizenship based on the address of the holder at that next level. That distinction has no relevance with respect to the Commission's rejection of shareholder addresses in *América Móvil*. The street (or post office box) address supplied by a shareholder discloses only the location of the place or the agent to which the stockholder wants information sent; it has no necessary relationship to the Section 310(b) status of the stockholder under the interpretation of Section 310(b) that the Commission applies to everyone but Verizon Wireless. Thus, the Joint Opposition failed to show anything except that Verizon Wireless's showing was deficient for *exactly the same reasons* that a showing based on addresses was deficient in *América Móvil*. Accordingly, the Commission must reconcile its decision in the *Verizon-Alltel Order* with *América Móvil* (which it cannot do), expressly overrule *América Móvil*, or conform its decision to *América Móvil*.

C. Verizon Wireless Has Not Explained (and Cannot Explain) Why *WWOR-TV* and the MSV Decisions Provide Precedent for the Commission's Decision.

The Joint Opposition states that the *Verizon-Alltel Order* "provides several examples in which the Commission approved of using shareholder addresses to demonstrate compliance with the foreign ownership requirements."¹⁹ That is incorrect.

CAPCC's Petition for Reconsideration explained exactly why the decisions that the Commission cited – *WWOR-TV* and the 2006 and 2008 decisions regarding Mobile Satellite Venture Subsidiary LLC (the "MSV Decisions") – provide no precedent for the Commission's decision in the *Verizon-Alltel Order*. *WWOR-TV* expressly contravenes the Commission's conclusion in the *Verizon-Alltel Order*. Although the applicant in *WWOR-TV* submitted mailing address information, the Commission found that the applicant's prior survey – a step that Verizon Wireless has not taken – adequately established its qualifications under Section 310(b),

¹⁹ Joint Opposition at 16 (citing *Verizon-Alltel Order*, ¶ 228 n.793).

so the mailing address information was irrelevant to the Commission's conclusion.²⁰ Indeed, the Commission expressly indicated in *WWOR-TV* that reliance upon mailing addresses was not a "reasonable method" to demonstrate compliance with Section 310(b).²¹ Under the D.C. Circuit's decision in *Kidd Communications*, this is a statement of policy from which the Commission cannot depart without adequate explanation, and the Commission gave none.²² CAPCC's Petition for Reconsideration pointed out, moreover, that the MSV Decisions do not mention methodology or shareholder addresses at all and thus cannot represent a change in FCC policy.²³ The Joint Opposition entirely failed to respond to these criticisms, and Verizon Wireless has not contested CAPCC's reading of these cases.

The Joint Opposition provided no justification for the Commission's reliance on *WWOR-TV* and the MSV Decisions even after CAPCC showed why these decisions do not provide valid precedents for relying on shareholder addresses to prove shareholder citizenship. Therefore, the Commission should infer that no such justification can be provided.

D. The Joint Opposition Did Not Justify the Commission's Acceptance of Shareholder Mailing Addresses "On a Fact-Specific, Case-by-Case Basis."

Kidd requires that the Commission reconcile its conflicting policies and adopt a clear statement of the basis for its decision and the policy applied or, as CAPCC urges, develop a more rational policy.²⁴ The Commission has not, however, provided any adequate justification for departing from settled precedent to apply a different interpretation of Section 310(b) to Verizon

²⁰ *WWOR-TV, Inc. For Transfer of Control of Station WWOR-TV, Licensee of Station WWOR-TV, Channel 9 Secaucus, New Jersey*, Memorandum Opinion and Order, 6 FCC Red 6569, 6572 ¶ 12 (1991) [hereinafter "*WWOR-TV*"], *appeal dismissed sub nom. Garden State B'casting Ltd. P'ship v. F.C.C.*, 996 F.2d 386 (D.C. Cir. 1993).

²¹ *See id.* at 6572 ¶ 13.

²² *See Kidd Commc'ns v. FCC*, 426 F.3d 1, 4-6 (D.C. Cir. 2005).

²³ *See* CAPCC Petition for Reconsideration at 19-21.

²⁴ *See Kidd Commc'ns*, 427 F.3d at 1, 6.

Wireless, particularly one that produces a foreign ownership and WTO/non-WTO assessment so substantively different from the interpretation applied to other applicants.

To justify its decision, the Commission stated that it had allowed companies to rely on shareholder addresses to show foreign ownership compliance “on a fact-specific, case-by-case basis.”²⁵ But as discussed above, the Commission had done no such thing. Furthermore, the Commission provided no facts to justify allowing reliance on shareholder addresses in this specific case. Verizon Wireless also never offered any special showing of reasons to exempt it from a settled interpretation of the statute, and indeed, there are no sound bases available. Time constraints do not justify the special treatment accorded to Verizon Wireless, as Verizon Wireless had ample time to conduct the survey and was fully in control of the timing of the presentation of the transaction. Limited resources also do not justify the special treatment, as Verizon has huge resources, and it would not have been exceptionally resource-intensive to analyze a statistically valid random sample of Verizon Wireless shareholders.

²⁵ *Verizon-Alltel Order*, ¶ 228.

III. Conclusion

For the reasons set forth herein, the Commission's unconvincing verbal acrobatics to justify the indefensible fail to obscure that its policies under Section 310(b) are irrational and unworkable. Accordingly, if the Commission is not going to make Verizon Wireless follow the same interpretation of Section 310(b) as socially disadvantaged businesses, it should not hide behind meaningless distinctions and distorted readings of its past cases, but forthrightly make the same interpretation available for use by socially disadvantaged businesses so that both large and small companies can have access to capital that would permit them better to serve the public interest.

Respectfully submitted,

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