



OPASTCO

February 24, 2009

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Written *Ex Parte* Presentation

**Re: Atlantis Holdings, LLC, Transferor, and Celco 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
WT Docket No. 08-95**

Dear Ms. Dortch:

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)¹ hereby submits this *ex parte* letter in response to Petitions for Reconsideration filed in the above-referenced proceeding.² OPASTCO asks the Commission to clarify a provision in the Memorandum Opinion and Order and Declaratory Ruling³ related to conditions imposed upon Verizon Wireless as part of its purchase of ALLTEL Wireless. More specifically, the Commission should clarify that the requirement that Verizon Wireless must honor its and ALLTEL Wireless's existing roaming agreements for four years following the merger applies to all the terms and conditions of those agreements, and not just the roaming rates charged.

As RTG notes in its petition, parties that filed comments and/or attended *ex parte* meetings related to this proceeding believed that the Commission would impose upon

¹ OPASTCO is a national trade association representing over 530 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3.5 million customers. Virtually all OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37). Approximately half of OPASTCO members provide some form of wireless service.

² *Petition for Reconsideration of the Rural Telecommunications Group*, WT Docket No. 08-95 (fil. Dec. 10, 2008) (RTG Petition); *Leap Wireless International Inc. Petition for Clarification or Reconsideration*, WT Docket No. 08-95 (fil. Dec. 10, 2008) (Leap Petition).

³ *Atlantis Holdings, LLC, Transferor, and Celco 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*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008) (Order).

Verizon Wireless certain merger conditions related to roaming.⁴ Specifically, the understanding was that Verizon Wireless would be required to: (a) allow those carriers who had roaming agreements with both Verizon Wireless and ALLTEL Wireless to choose which agreement would apply going forward; (b) honor all of ALLTEL Wireless's existing roaming agreements; and (c) honor all of its and ALLTEL Wireless's agreements for four years. However, the final Order released by the Commission is ambiguous as to the exact nature of the roaming conditions imposed.

To begin with, paragraph 178 states that Verizon Wireless is prohibited from "...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, whichever occurs later."⁵ According to Verizon Wireless and ALLTEL Wireless, this language only limits the ability of Verizon Wireless to raise the roaming rates contained in agreements that either company had with other wireless carriers as of the date the merger was approved. However, the language is not as clear as Verizon Wireless and ALLTEL Wireless contend. Paragraph 178 also states that the FCC conditions the transaction on the commitment by Verizon Wireless to "... honor ALLTEL's *existing agreements* with other carriers to provide roaming on ALLTEL's CDMA and GSM networks."⁶ The Order also refers to "agreements," and not simply rates, in language that allows those carriers with roaming agreements with Verizon Wireless and ALLTEL Wireless to choose which agreement will apply going forward.⁷ A plain meaning reading of these two provisions implies that the obligations imposed upon Verizon Wireless extend to all the terms and conditions of Verizon Wireless's and ALLTEL Wireless's roaming *agreements* with other carriers, which include the roaming rates as just one provision.

Contributing to the ambiguity of paragraph 178 is the separate statements of Commissioners Adelstein, Copps, and Tate on the Order. In discussing the conditions imposed upon Verizon Wireless, the three Commissioners each refer to "existing roaming agreements" or "roaming contracts," and not simply the roaming rates. The language in these statements leads to the conclusion that a majority of the Commission intended the roaming obligations to apply to *all* of the terms and conditions of Verizon Wireless's and ALLTEL Wireless's agreements as they existed at the time the transaction was approved. While the statements of the three Commissioners do not have the force of law, they are, unlike the language of paragraph 178, quite clear.

While roaming rates are an important part of a roaming agreement, these agreements contain numerous other provisions. These include, for example, "...Service Level Agreements, coverage area guarantees, in-market roaming assurances, data roaming requirements, and other commercial, legal, and technical particulars."⁸ that that can affect the relationship between roaming partners and the experiences of each party's

⁴ See, RTG Petition, pp. 8-9; Leap Petition, p. 3.

⁵ Order, 23 FCC Rcd 17524, ¶ 178 (emphasis added).

⁶ *Id.* (Emphasis added).

⁷ *Id.*

⁸ RTG Petition, pp. 10-11.

customers. More importantly, the ability of Verizon Wireless to change these provisions in existing agreements with its rural wireless carrier roaming partners can significantly affect rural carriers' ability to offer roaming services to their customers.

As demonstrated above, the Order's provisions imposing roaming conditions upon Verizon Wireless are unclear. The Commission should therefore clarify the language of paragraph 178 to require Verizon Wireless to honor, for four years, all the terms and conditions of both its and ALLTEL Wireless's roaming agreements in their entirety.

Sincerely,

/s/ Stuart Polikoff

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