

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

March 19, 2009

Scott D. Delacourt
202.719.7459
sdelacourt@wileyrein.com

VIA ELECTRONIC FILING

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

Re: Notice of *Ex Parte* Presentation

WT Docket No. 08-95 – Applications of Atlantis Holdings LLC and Celco Partnership d/b/a Verizon Wireless for Consent to the Transfer of Control of Commission Licenses and Authorizations

Dear Ms. Dortch:

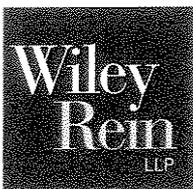
On Wednesday, March 18, 2009, Andre Lachance of Verizon Wireless and Scott Delacourt of Wiley Rein LLP met with Paul Murray, Acting Legal Advisor to Acting Chairman Copps, to discuss roaming issues associated with this proceeding. The discussion covered topics raised in recent roaming *ex parte* letters.¹ Mr. Lachance and Mr. Delacourt made arguments on these topics consistent with what Verizon Wireless has argued previously in the docket.

Among other topics, Verizon Wireless responded to the February 24, 2009 *ex parte* filed by the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”)² addressing Verizon Wireless’ voluntary commitment, adopted as a condition in the Verizon Wireless-Alltel merger, not to:

“adjust upward the rates set forth in ALLTEL’s existing agreements with each regional, small and/or rural carrier for the full term of the

¹ Letter from Stuart Polikoff, Director of Government Relations, OPASTCO, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-95 (filed Feb. 24, 2009) (“OPASTCO Ex Parte Letter”); *see also* Letter from Jean L. Kiddoo, Counsel for MetroPCS Communications, Inc., to Marlene H. Dortch, Secretary, FCC (filed Mar. 12, 2009); Letter from James H. Barker, Counsel for Leap Wireless International, Inc., to Marlene H. Dortch, Secretary, FCC (filed Mar. 12, 2009).

² OPASTCO Ex Parte Letter.



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agreement or for four years from the closing date”³ (the “Pricing Condition”).

OPASTCO asks the Commission to replace the Pricing Condition with a requirement that Verizon Wireless honor all the terms and conditions – not just the rates – of the ALLTEL roaming agreements for four years following the merger. OPASTCO, however, fails to provide new arguments or facts that warrant a reversal of the Commission’s previous finding that the Pricing Condition – in combination with the other roaming commitments – sufficiently protects consumers. Accordingly, OPASTCO’s request for reconsideration should be rejected.

No reason exists in fact or law for the Commission to backtrack from its previous conclusion that Verizon Wireless’ voluntary roaming commitments adequately protect consumers.⁴ Indeed, Verizon Wireless’ roaming commitments – which the Commission adopted in the *Grant Order* – are clear and unambiguous. Regarding Verizon Wireless’ commitment not to “*adjust 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,*”⁵ the terms of the condition speak for themselves. Verizon Wireless offered – and the Commission accepted – a condition that allows certain roaming partners to preserve an advantageous rate for a minimum of four years.

³ See *Applications of Celco 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 and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-258, WT Docket No. 08-95, ¶ 178 (Nov. 10, 2008) (“*Grant Order*”) (emphasis added).

⁴ In addition to the condition at issue, the Commission approved two other roaming commitments: (1) “[E]ach such regional, small and/or rural carrier that has a roaming agreement with Alltel will have the option to keep the rates set forth in that roaming agreement 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”; and (2) “[E]ach such regional, small and/or rural carrier that currently has roaming agreements with both Alltel and Verizon Wireless will have the option to select either agreement to govern all roaming traffic between it and post-merger Verizon Wireless.” *Ex Parte* Letter from John T. Scott, III, Vice President & Deputy General Counsel Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 (July 22, 2008) (“*Verizon July 22 Letter*”).

⁵ See *Grant Order*, ¶ 178 (emphasis added).

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The wording of the other roaming conditions adopted by the Commission are equally straightforward and not in conflict with the Pricing Condition. First, the commitment that provides non-nationwide roaming partners with “the option to keep the rates set forth in [a] roaming agreement in force for the full term of the agreement, notwithstanding any change of control or termination for convenience provisions” simply ensures that Alltel’s roaming partners will retain *access* to their current rates and Verizon Wireless will not exercise any contractual provisions that allow it to dissolve Alltel’s roaming agreements before their scheduled expiration.⁶ Second, Verizon Wireless’ commitment to provide certain carriers “that currently ha[ve] roaming agreements with both Alltel and Verizon Wireless . . . the option to select either agreement to govern all roaming traffic between it and post-merger Verizon Wireless” provides select roaming partners with the opportunity to *choose* the most advantageous of the two agreements to govern their roaming traffic for the duration of the selected agreement.⁷

Against this backdrop, it is clear that OPASTCO’s *post-hoc* construction of the Pricing Condition is nothing more than a self-serving attempt to expand the scope of the condition for the financial benefit of its members. Contrary to OPASTCO’s assertion, the commitment offered by Verizon Wireless and approved by the Commission was well understood prior to release of the *Grant Order*, and other formulations – including those advanced now by OPASTCO – were considered and rejected. In fact, in the *Grant Order*, the Commission stated: “Commenters further request that Verizon Wireless make clear that their roaming commitment apply to all terms of ALLTEL’s existing contracts – not just the rates.”⁸ The Commission then refused to adopt the proposed alteration to the applicant’s proffered condition. OPASTCO’s suggestion that the terms of this condition are somehow ambiguous conflicts with the record.

Putting aside the Commission’s clear acceptance of Verizon Wireless’ proposed commitment without modification, the other sources that OPASTCO relies on for its proposed overhaul of the condition depart from established norms of construing statutory and regulatory language. Contrary to OPASTCO’s preference,

⁶ Verizon July 22 Letter at 2.

⁷ *Id.*

⁸ See *Grant Order*, ¶ 176, n.608 (citing Reply Comments of Leap Wireless International, Inc., WT Docket No. 08-95, at 24 (filed Aug. 26, 2008); Reply to Opposition to Petition to Deny of the *Ad Hoc* Public Interest Spectrum Coalition, WT Docket No. 08-95, at 5 (filed Aug. 26, 2008)).



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the understanding of parties in *ex parte* meetings should be accorded no weight in construing the language of the condition. Such an unbounded tool of construction could be marshaled in support of any meaning favored by the party advancing it. Nor are FCC Commissioner statements relevant in this instance. As OPASTCO correctly concedes, Commissioner statements “do not have the force of law.”⁹

The record reflects that after consideration and rejection of alternatives, the Commission adopted Verizon Wireless’ voluntary commitment on roaming pricing without change as the Pricing Condition. There is no basis in fact or law to reconsider the Commission’s conclusions.

Pursuant to Section 1.1206(b)(2) of the Commission’s rules, an electronic copy of this letter is being filed for inclusion in the above-referenced docket.

Sincerely,

/s/ Scott D. Delacourt

Scott D. Delacourt

cc: Paul Murray

⁹ OPASTCO Ex Parte Letter at 2.