

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

In the Matter of)
)
Applications of Cellco Partnership d/b/a) WT Docket No. 08-95
Verizon Wireless and Atlantis Holdings LLC)
)
For Consent To Transfer Control of Licenses,)
Authorizations, and Spectrum Manager and)
De Facto Transfer Leasing Arrangements)

TO: Office of the Secretary
Federal Communications Commission
ATTN: Acting Chief, Wireless Telecommunications Bureau

**COMMENTS IN SUPPORT OF REQUEST FOR
EXTENSION OF MANAGEMENT PERIOD**

Telephone USA Investments, Inc. (“Telephone USA”), by its attorneys and for the important policy reasons set forth herein, hereby supports the Request for Extension of Management Period (“Extension Request”) filed on April 22, 2009, by Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) in the above-referenced proceeding.

In the Extension Request, Verizon Wireless requests a 60-day extension of time until July 8, 2009, to dispose of the Divestiture Assets as required by the Commission’s *Merger Order* in the above-referenced proceeding.¹ Telephone USA, a new entrant and a small business, has been negotiating with Verizon Wireless to purchase certain of the Divestiture Assets and believes the requested extension will help Verizon Wireless comply with the Commission’s directive to “assist regional, local, and rural wireless providers, new entrants, small businesses, and

¹ See Extension Request; Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444, 17515-20 ¶¶ 157-70 (2008) (“*Merger Order*”).

businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture Assets and/or accessing spectrum, to the extent possible.”²

The requested extension will greatly enhance Verizon Wireless’ ability to comply with the above directive. New entrants, small businesses, businesses controlled by women, and minority controlled businesses often need more time to arrange financing than larger, already-established companies. Furthermore, such entities may wish to purchase smaller groups of assets, requiring Verizon Wireless to engage in more negotiations to dispose of the Divestiture Assets with such entities. As a result, if the Bureau denies the Extension Request, Verizon Wireless may have to curtail its current negotiations, which would result in a sale of the Divestiture Assets to a few large incumbents.

The Bureau should not forego this unique opportunity to promote diversity in ownership in the telecommunications industry, which has long been a public policy goal of both the Commission and of Congress. Section 257 of the Telecommunications Act of 1996, as well as Sections 309(i) and 309(j) of the Communications Act, for example, require the Commission to take specific steps to further this goal by eliminating market entry barriers, granting preferences to applicants that would increase diversification of ownership, and by devising competitive bidding systems to “avoid[] excessive concentration of licenses and ... disseminate[e] licenses among a wide variety of applicants.”³ The Commission has made numerous attempts to encourage diversity in ownership, including awarding bidding credits for auctions of spectrum to smaller businesses that qualify as designated entities and establishing the “Advisory Committee

² *Id.* at 17518 ¶ 162.

³ 47 U.S.C. § 309(j)(3)(B) (2006); *see also id.* §§ 257, 309(i)(3).

for Diversity in the Digital Age.”⁴ Recently, the Commission granted the application for XM and Sirius to merge, and based that grant, in part, on the combined entity’s commitment to make four percent of channel capacity available to entities under minority control.⁵ The Commission specifically found that this commitment addressed concerns about diversity of programming following the merger and that it was “consistent with the Commission’s stated goals to promote diversity[.]”⁶

Despite the Commission’s efforts, however, diverse ownership in the telecommunications industry remains extraordinarily low. As the Commission has consistently recognized, new entrants face widespread discrimination in the capital markets.⁷ New entrants, small businesses, and minority-owned businesses face a significant barrier to entry into the extremely capital-intensive telecommunications industry controlled by a few large companies, and the Commission must take advantage of any reasonable opportunity to remedy the lack of diverse ownership, especially during the current era of ownership consolidation.

In the *Merger Order*, to avoid potentially significant competitive harm, the Commission conditioned its approval of the proposed merger on Verizon Wireless’s divestiture of assets in

⁴ See 47 C.F.R. § 1.2110 (2008); See *Chairman Powell Announces Intention to Form a Federal Advisory Committee to Assist the Federal Communications Commission in Addressing Diversity Issues*, Public Notice (rel. May 19, 2003); see also Advisory Committee for Diversity in the Digital Age at <http://www.fcc.gov/DiversityFAC/> (last visited Apr. 27, 2009).

⁵ *Applications for Consent to Transfer of Control of Licenses, XM Satellite Radio Holdings, Inc. to Sirius Satellite Radio Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 12348, 12409-11 ¶¶ 134-35 (2008).

⁶ *Id.* at 12410-11 ¶ 135.

⁷ See, e.g., William D. Bradford, *Discrimination in Capital Markets, Broadcast/Wireless Spectrum Service Providers and Auction Outcomes* (2000); Ivy Planning Group, LLC, *Whose Spectrum is it Anyway? Historical Study of Market Entry Barriers, Discrimination and Changes in Broadcast and Wireless Licensing [1950 to Present]* (2000); see also *Proposed Reforms to Affirmative Action in Federal Procurement*, 61 Fed. Reg. 26042, 26052 (Dep’t of Justice, May 23, 1996) (DOJ proposal citing studies and Congressional hearings documenting that “widespread discrimination, especially in access to financial credit, has been an impediment to the ability of minority-owned business to have an equal chance at developing in our economy”).

105 cellular market areas.⁸ The Commission established a 120-day Management Period during which Verizon Wireless would have the opportunity to sell the Divestiture Assets before any remaining Divestiture Assets would be irrevocably transferred to a Divestiture Trustee.⁹ The Commission also authorized the Wireless Telecommunications Bureau, upon application, to grant extensions of time, up to 60 days in the aggregate, for Verizon Wireless to dispose of the Divestiture Assets.¹⁰

This required divestiture – larger than any other wireless divestiture since Verizon Wireless’s formation in 2000 – presents the Commission with a unique opportunity to increase diversity of telecommunications ownership.¹¹ To further that goal, the Commission imposed an obligation on Verizon Wireless to “consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture Assets and/or accessing spectrum, to the extent possible.”¹²

As explained in the Extension Request, Verizon Wireless has worked diligently to dispose of the Divestiture Assets, but it needs an extension of time to reach agreements and file the associated applications with the Commission.¹³ The number of bidders, the size and complexity of the divestitures, and bidders’ heightened due diligence requirements in light of current economic conditions all have prevented completion of the divestiture process within the initially allotted 120 days.¹⁴

⁸ See *Merger Order* at 17515-16 ¶ 157.

⁹ *Id.* at 17519-20 ¶¶ 166-67.

¹⁰ *Id.* at 17519 ¶ 166.

¹¹ See Extension Request at 2.

¹² See *Merger Order* at 17518 ¶ 162.

¹³ See Extension Request at 3-4.

¹⁴ See *id.*

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, do hereby certify that on this 28th day of April 2009, copies of the foregoing Comments in Support of Request for Extension of Management Period were served as follows:

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