

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

In the Matter of)	
)	
AT&T Inc. and Cellco Partnership)	WT Docket No. 09-104
D/B/A Verizon Wireless Seek FCC)	
Consent to Assign or Transfer Control)	
of Licenses and Authorizations and)	
Modify a Spectrum Leasing Arrangement)	

**PETITION OF NTELOS INC.
TO CONDITION CONSENT OR DENY APPLICATION**

Pursuant to the FCC’s June 19, 2009 notice in this proceeding, NTELOS Inc., on behalf of itself and its wireless operating subsidiaries, submits this Petition to Condition Consent or Deny the Application of AT&T and Verizon to transfer the licenses at issue from Verizon to AT&T (“Divested Licenses”). Verizon is required to divest the licenses and related authorizations as part of Verizon’s acquisition of ALLTEL.

I. NTELOS Provides a Competitive Alternative in Rural Markets

NTELOS holds PCS licenses to operate in twenty-nine basic trading areas with a total licensed population of approximately 8.8 million. NTELOS has built out its network in twenty of those basic trading areas and covers 5.5 million POPs. NTELOS now serves almost 445,000 retail wireless subscribers representing approximately 8% penetration of NTELOS’ total covered population.

NTELOS began acquiring PCS spectrum in western Virginia and West Virginia in the mid-90s and introduced service in western Virginia in late 1997, in West Virginia in late 1998, and in eastern Virginia (Richmond, Hampton Roads, Norfolk, Virginia Beach) in 2000. It is significant to note that much of NTELOS’ PCS Spectrum was acquired after the first auction in partitions from Primeco (in western Virginia) and from GTE (in West Virginia). Both these

entities are now part of Verizon Wireless. The larger carriers sold their entire PCS spectrum holdings in these markets to NTELOS. It was clear at the time that they were focused on the urban areas and were not interested in building out a rural geography. NTELOS, on the other hand, has been steadily building out mountainous and relatively sparsely populated communities in Virginia and West Virginia for many years.

NTELOS continues to make significant investments in its wireless network. In 2005-2007, NTELOS added 186 new cell sites to increase its total sites to 1,023. NTELOS has 84 company-owned retail stores, many more than its competitors have in NTELOS' region. Its call centers are all located in western Virginia. NTELOS' retail presence through its stores, along with customer care centers in Waynesboro, Covington, and Daleville Virginia, are in keeping with NTELOS' long-standing commitment to be a part of local communities it serves.

In August of 2007, NTELOS announced that it would upgrade virtually its entire network for mobile broadband services using EVDO Rev. A. EVDO data services are at speeds 10 times faster than those available on NTELOS' 1x data network – the wireless equivalent of moving from dial-up to DSL.

In order to accomplish the EVDO upgrade, NTELOS undertook the largest capital expenditure in its 112-year history. In 2008, NTELOS completed the EVDO deployment in western Virginia and West Virginia. On July 9, 2009, NTELOS announced the completion of the EVDO broadband upgrade in its Virginia East market, including Richmond, Hampton Roads, Norfolk, and Virginia Beach.

In the course of the EVDO deployment, NTELOS replaced the wireless switches in its western Virginia and West Virginia networks; upgraded the existing switches in eastern Virginia; and changed out equipment at over 1,000 cell sites. The multi-million dollar investment in

broadband means faster download speeds of large, graphic-rich files, ringtones, music and games and quicker functioning Smartphones and BlackBerrys. NTELOS also added 160 new sites to its network in 2008, representing an increase in sites of over 15%. It has added 23 new cell sites so far in 2009. These new sites allow for more complete network coverage, improved call reception and enhanced in-building service.

NTELOS offers a wide array of voice and data plans to meet the specific needs of each of its customers. Plans that offer unlimited calling on the NTELOS network are available to both prepay and postpay customers. NTELOS also offers national plans to all of its customers -- prepay and postpay -- featuring nationwide long distance and no roaming via buckets of daytime, mobile-to-mobile, and night and weekend minutes. Customers can choose from a variety of added-value features like integrated voicemail and data services such as location-based services, text and picture messaging, games, ring-tones, ring-back tones, news, entertainment and hundreds of BREW applications.

In June of 2009, NTELOS introduced the most affordable unlimited prepaid calling plan in its region. NTELOS' new Frawg Unlimited Wireless service offers unlimited, anytime calling starting at just \$30 a month without a contract, credit check, or activation fee. Customers can choose from a variety of phones as well as a range of Frawg plans, including plans with unlimited text messaging and data usage.

II. Concentrating Spectrum in the Hands of the Two Largest National Carriers Harms Competition

NTELOS was an active participant in the FCC proceeding leading up to Verizon's acquisition of ALLTEL. In jointly-filed pleadings, MetroPCS and NTELOS warned that the

Divested Licenses would end up in the hands of a national carrier unless the FCC acted. The prediction was accurate. NTELOS and MetroPCS asked the FCC to require that the Divested Licenses be sold to rural and regional mid-tier carriers who would be in the best position to offer roaming services to others. As rural and regional mid-tier carriers by definition do not have national footprints, they have natural incentives to offer roaming services to others in order to attract additional revenues. In addition, the divested spectrum would provide for an outlet for these same carriers to offer additional competition to existing carriers.

Transferring the spectrum to AT&T accomplishes the narrow goal of ensuring that Verizon no longer holds the Divested Licenses. It does not satisfy the more fundamental goal of preventing market concentration from increasing. In that regard, the transaction proposed in this proceeding is counterproductive. When the larger players merely exchange spectrum and properties between themselves rather than to other competitors, market concentration increases to the detriment of consumers and the public interest.

III. Lack of Access to Spectrum Puts Smaller Carriers at a Disadvantage

Mid-tier regional and rural carriers cannot remain vigorous competitors if their ability to grow and develop is choked off by a lack of meaningful access to spectrum. NTELOS' average spectrum holdings are only 23 MHz and, in the eastern Virginia markets (the most competitive and populated served by NTELOS), it has only 20 MHz of spectrum. In recent auctions, NTELOS was quickly priced out of those markets by the large carriers. In contrast and because it acquired ALLTEL, Verizon now has over 90 MHz of spectrum in the eastern Virginia markets, including the A and B Block cellular licenses as well as 700 MHz licenses.

Smaller carriers like NTELOS must overcome not only quantity disadvantages, but also quality differences in spectrum. The recently auctioned 700 MHz licenses, along with the 800

MHz cellular licenses, are the optimum spectrum ranges for delivering mobile wireless services. The national carriers, and especially Verizon and AT&T, have the lion's share of this "beachfront property" spectrum. NTELOS must make do with PCS and AWS band spectrum. Those bands have less favorable propagation characteristics in comparison to cellular and 700 MHz – and so require significantly more cell sites to achieve the same coverage and quality. NTELOS has faced this challenge through the years as it works to build out the mountainous regions of Virginia and West Virginia. In-building penetration is also more challenging in the PCS and AWS spectrum ranges. In-building coverage is a critical competitive factor as more and more customers "cut the cord" and so rely on their mobile phone service in their homes, offices and similar locations.

The disparity in spectrum holdings between the smaller carriers and the national carriers is a strategic disadvantage for NTELOS and similar carriers, making us more and more vulnerable over time. Wireless vendors develop applications, features, and services based primarily on the estimated demand of the large carriers. Verizon, the national CDMA carrier, has over 85 MHz of spectrum in almost all metropolitan areas in the United States while NTELOS has an average of 23 MHz. To the extent that the carriers which drive the development of new capabilities are not spectrum constrained, developers are free to create new services without regard to the amount of spectrum needed to deploy those services. In the instant case, if the FCC permits AT&T to obtain the divested spectrum, the gulf between the spectrum holdings of the national carriers and the smaller carriers widens.

IV. The FCC Should Make Progress on the Fundamental Issues Facing Small Carriers Before Acting on the Application in this Docket

If the past is an indication, the FCC will deal with this Application to transfer the Divested Licenses in the near term and will leave investigations of the industry issues raised by

NTELOS and others for the longer term. NTELOS would ask, however, that the Commission at least resolve the pending petitions for reconsideration and clarification stemming from the approval of Verizon's acquisition of ALLTEL prior to taking any action on the instant Application. Verizon is attempting to renege on the commitments it made in the Verizon/ALLTEL proceeding. If the urgent issues facing smaller carriers are put on the back burner while Verizon is permitted to ignore its promises and AT&T to acquire the Divested Licenses, the ultimate losers are the consumers of this country. If the Commission is unwilling to tackle the difficult issues and to protect the interest of consumers, it must deny the Application.

Respectfully submitted,

By: 
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July 20, 2009

VERIFICATION

I, Mary McDermott, am the Senior Vice President-Legal and Regulatory Affairs for NTELOS Inc. I am a resident of the Commonwealth of Virginia, over the age of 18, and competent to make this verification in support of the attached Petition of NTELOS Inc. to Condition Consent or Deny Application ("Petition").

I hereby verify under penalty of perjury that I have read the foregoing Petition, and that the statements contained therein are true, complete, and correct.

Executed on July 20, 2009


Mary McDermott

CERTIFICATE OF SERVICE

I, Mary McDermott, certify that a copy of the foregoing NTELOS Comments in WT Docket No. 09-104 was sent via electronic email to the following parties on this 20th day of July, 2009.


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