

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

In the Matter of)	
)	
Application of AT&T, Inc. and Cellco)	WT Docket No. 09-104
Partnership d/b/a Verizon Wireless)	
)	
For Consent to Assign or Transfer Control of)	
Licenses and Authorizations and Modify a)	
Spectrum Leasing Arrangement)	

To: The Commission

**PETITION TO DENY
OF
THE NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, INC.**

The National Association of Black Owned Broadcasters, Inc. ("NABOB"), by its attorneys, pursuant to Section 309(d)(1) of the Communication Act, 47 USC §309(d)(1) and Section 1.939 of the Commission's Rules, 47 CFR §1.939, hereby submits its Petition to Deny the above-captioned application of Cellco Partnership d/b/a Verizon Wireless ("VZW") seeking Commission consent to assign and transfer control of licenses and authorizations to AT&T, Inc. ("AT&T"), and to modify a specific leasing arrangement, from the assets of ALLTEL, Inc. ("ALLTEL")(the "Application").

VZW has ignored the Commission's direction to make an effort to sell the Divestiture Assets to minorities, new entrants and small carriers, has conducted a sham bidding process in which the sale to AT&T was prearranged, and has continued the efforts of VZW and AT&T to push the mobile wireless industry into a duopoly controlled by these two dominant carriers. For these reasons, NABOB submits that the Application should be denied, or designated for hearing to investigate: (1) the extent to which VZW and AT&T had agreed to the proposed transaction while VZW pretended

to entertain offers from other bidders, and (2) whether allowing VZW and AT&T to increase their national and local market dominance is in the public interest.

I. INTRODUCTION

NABOB is the only trade association representing the interests of the 240 African American owned radio stations and 10 African American owned television stations in the United States. Founded in 1976, one of NABOB's principal objectives has been to promote minority ownership of telecommunications facilities. NABOB submits that the divestiture of the licenses and authorizations before the Commission is a critical opportunity for the Commission to effectively promote minority ownership in the wireless industry, but, unless the Commission denies the instant transaction, the Commission will allow AT&T and VZW to completely undermine the Commission's policy of promoting minority ownership.

Promotion of diversity of ownership in the telecommunications industry has been an important Commission policy for decades.¹ The policy is based upon the recognition that the control of the airwaves should be distributed among many different voices so that the voices of all segments of society, including those of racial minorities, can be heard.² In recent years, the convergence of technologies has broadened the telecommunications platforms from which the public receives the expression of ideas and information. As a result, Congress and the Commission have broadened their efforts to expand minority ownership opportunities to all telecommunications services.³

¹ *Promoting Diversification of Ownership In the Broadcasting Services, 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 23 FCC Rcd 5922, par. 2.

² *Id.*

³ *See*, 47 USC §§257, 309(i)(3) and 309(j)(3)(B).

Broadband technologies increasingly are delivering news, information and entertainment to the American public. In recognition of this fact, Congress has directed the Commission to develop a national broadband policy.⁴ Wireless broadband services will be an important part of the national broadband network, and the licenses and authorizations being transferred by VZW will be an important part of the broadband assets utilized by the carrier that acquires the Divestiture Assets.

Members of NABOB are seeking to become owners of wireless services that will be part of the national broadband network. In particular, some members of NABOB bid to acquire the Divestiture Assets. In addition, members of NABOB are customers of both VZW and AT&T. Therefore, NABOB has vital interests in the proposed disposition of the Divestiture Assets and in the Commission's policies that will impact diversity of ownership in the wireless industry, and it, therefore, has standing to submit this Petition.

II. BACKGROUND

This proceeding evolved from the application of VZW for Commission approval of the transfer of the licenses, authorizations, spectrum manager and leasing arrangements of ALLTEL.⁵ In the VZW-ALLTEL proceeding, the Commission issued the Divestiture Order, ordering the applicants to divest all of the licenses and other assets of one of the applicants in 100 markets (the "Divestiture Assets"). The Commission ordered the divestitures, because it determined that, upon

⁴ *A National Broadband Plan for Our Future*, FCC 09-31, GN Docket No. 09-51, Notice of Inquiry, released April 8, 2009.

⁵ *Application of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings, LLC for Consent to Transfer Control of Licenses, Authorizations, 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*, 23 FCC Rcd 5922 (2009) (the proceeding is referred to herein as the "VZW-ALLTEL" proceeding, and the order issued is referred to as the "Divestiture Order").

the acquisition of ALLTEL, VZW would have too much market power in the divestiture markets, and it was “likely the merged entity could behave in an anticompetitive manner because of its high combined market share.”⁶

In the VZW-ALLTEL proceeding, several parties requested that the Commission place constraints upon the parties to whom the applicants could sell the Divestiture Assets. Several commenters specifically requested that the applicants not be permitted to sell the Divestiture Assets to another nationwide wireless provider.⁷ In addition, one commenter Chatham Avalon Park Community Council, requested that the Commission order the applicants to make an effort to sell the Divestiture Assets to companies controlled by minorities or members of socially disadvantaged groups.⁸

In the Divestiture Order, the Commission declined to place any restrictions on the acquirer that would limit the size or other attributes of any potential acquirer. However, the Commission noted that “the qualifications of the entity(ies) acquiring the Divestiture Assets and whether the specific transaction is in the public interest will be evaluated when an application is filed seeking the Commission’s consent to the transfer or assignment of the Divestiture Assets.”⁹ The Commission then added, “[W]e encourage 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.”¹⁰

⁶ Divestiture Order at par. 103.

⁷ *Id.* at par. 160.

⁸ *Id.*

⁹ *Id.* at par. 162.

¹⁰ *Id.* at par. 162.

After the Commission issued its Divestiture Order, VZW announced a formal bidding process in which the public was advised that any party interested in bidding for some or all of the Divestiture Assets could participate in the bidding process.

III. THE COMMISSION'S STANDARD OF REVIEW

The Commission must conduct its review of this transaction, pursuant to Sections 214(a) and 310(d) of the Communications Act, to determine whether the applicants have met their burden to demonstrate by a preponderance of the evidence that the transaction “will serve the public interest, convenience and necessity.”¹¹ The Commission’s public interest evaluation encompasses the “broad aims of the Communications Act” which includes “a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.”¹² If the Commission is “unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, [the Commission] must designate the application for hearing under section 309(e) of the Communications Act.”¹³

As NABOB shall demonstrate below, the proposed transaction will do serious damage to the Commission’s statutory duty to promote diversity of ownership in the telecommunications industry and fails to demonstrate that other public interest benefits will offset this damage to diversity of

¹¹ *Id.* at par. 26.

¹² *Id.* at par. 27.

¹³ *Id.* at 26, citing, e.g., *Application of EchoStar Communications Corporation (A Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (A Delaware Corporation) (Transferee)*, CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20620, par. 153 (2002) (“EchoStar Hearing Designation Order”).

ownership. Therefore, the Commission must deny the application or designate it for hearing, pursuant to Section 309(e) of the Communications Act.¹⁴

IV. THE BIDDING PROCESS WAS A SHAM

VZW established a bidding process that was obviously intended to give the impression that VZW had heeded the Commission's instruction to "consider and implement mechanisms to assist minorities . . . in acquiring the Divestiture Assets." VZW hired Morgan Stanley to handle the bidding process. However, the minorities who went through the process eventually realized that it was strictly "business as usual" in the VZW bidding process, and minority bidders were never given serious consideration as potential purchasers.

Although there was "word on the street" that VZW was going to have a special session with prospective minority bidders to acquaint them with what the process would entail and what steps VZW would undertake to assist minority bidders, no such session was ever held. Instead, VZW had Morgan Stanley conduct a bidding process that erected barriers to minority participation, and made no serious effort to bring minorities into the bidding process.

Morgan Stanley announced at the outset that VZW preferred to sell all of the Divestiture Assets to a single purchaser. This preference made it clear that no minority purchaser was a preferred purchaser, because it was very unlikely that a minority purchaser, or any new entrant, could finance such an acquisition. Rather, the message from the outset was that there would be no special effort to sell to a minority or new entrant. Thus, in spite of the external appearance of an open process, the bidding was set up to favor a large existing carrier from the beginning. Obviously, this meant the process was set up to favor AT&T from the outset.

¹⁴ EchoStar Hearing Designation Order, *supra*. at 20620.

In addition, the process to which the minority bidders and new entrants were subjected was erratic and inconsistent. Dates set for submission of bids changed without warning, and no information was provided to minority bidders explaining these changes. It began to appear to some bidders that the process was being manipulated to favor some bidders that seemed to be getting special treatment. Soon, the “word on the street” was that everyone was wasting their time, because a deal had already been made between VZW and AT&T. These rumors were given more credence by a *Wall Street Journal* article pointing out that AT&T was seeking to purchase the Divestiture Assets, and it “is in the strongest financial position of the interested companies.”¹⁵ This was **before** the deadline for submission of bids. Indeed, one prospective minority purchaser dropped out of the bidding after one its potential financing sources lost interest after hearing that a deal had already been struck between AT&T and VZW.

Thus, when the announcement was made that, indeed, AT&T would acquire the bulk of the Divestiture Assets, the worst fears of the minority bidders were realized. It was at that point that the truth became crystal clear – the whole process had been a sham, and the minorities had expended a great deal of time, money and effort on a process that was rigged from the beginning.

The conclusion that the sale to AT&T was predetermined was made even more clear when the *Wall Street Journal* reported the announced sale. In the same article in which the sale of the Divestiture Assets to AT&T was announced, it was reported that in a separate transaction, VZW agreed to purchase several service areas from AT&T.¹⁶ In other words, this was a situation in which the two industry behemoths traded licenses to carve up the country for themselves. The Commission

¹⁵ *Wall Street Journal*, February 4, 2009, at <http://online.wsj.com/article/SB123370887127645883.html>.

¹⁶ *Wall Street Journal*, May 9, 2009, at <http://online.wsj.com/article/SB124181197313301707>.

must also look into whether the “swap agreement” between Verizon and AT&T from the proposed acquisition of Centennial Communications Corp. by AT&T constituted another barrier to other bidders for the Divestiture Assets.¹⁷ If it was, this is further evidence that bidding for the Divestiture Assets was a sham from the start, and its results cannot be approved by the Commission.

The Commission cannot allow this manipulation of its Divestiture Order to succeed. The Commission must deny the Application and direct VZW to conduct a true bidding process that makes a real effort to sell the Divestiture Assets to minorities and new entrants. In the alternative, the Commission should designate the Application for hearing to investigate the extent to which VZW and AT&T had prearranged this sale before the bidding process for the minorities, new entrants and smaller carriers had even begun.

V. THE PROPOSED TRANSACTION WILL NOT SERVE THE PUBLIC INTEREST AND SHOULD BE DENIED OR DESIGNATED FOR HEARING

The Commission recognized throughout the Divestiture Order that creation of monopoly power in any local market would not serve the public interest. The Commission noted that in general “in any market in which the transaction would reduce the number of genuine competitors to three or fewer, the proposed transaction may result in a significant likelihood of successful unilateral effects or coordinated interaction.”¹⁸ Unfortunately, the Commission’s analysis seems to leave open the possibility of creating an oligarchy in the wireless industry. The Commission places little emphasis in its competitive analysis upon creating opportunities for new entrants in the wireless industry.

In the Divestiture Order, the Commission stated that the applicants should “assist . . .

¹⁷ *Application of AT&T Inc. and Centennial Communications Corp. for Consent to Assign or Transfer Control of Licenses, Leasing Arrangements and Authorizations*, WT Docket No. 08-246, Public Notice, released December 16, 2008.

¹⁸ Divestiture Order at par. 101.

minorities. . . in acquiring the Divestiture Assets.”¹⁹ However, the competitive analysis in that same Divestiture Order said nothing about making opportunities available for new entrants. Therefore, in its review of the transaction before it, the Commission must reconcile its policy objectives for promotion of diversity of ownership with its competitive analysis.

The reconciliation of the Commission’s policy to promote diversity of ownership with its competitive analysis requires that the Commission avoid the creation of an oligarchy in the wireless industry. In the context of the pending transaction, this means that the Commission may not simply allow the two largest wireless carriers to continue to grow larger and assume an even greater share of the local and national markets for wireless service. If this transaction is approved, VZW and AT&T will have 60% of the national wireless market, consisting of approximately 150 million subscribers.²⁰ The third and fourth largest carriers, Sprint-Nextel and T-Mobile, have about 51.3 and 31.5 million subscribers, respectively. The remaining 32 million subscribers are divided among the more than 145 carriers identifying themselves as “terrestrial mobile wireless carriers.”²¹ Therefore, the Commission currently is overseeing a wireless industry which consists of an oligarchy of four national competitors and 145 significantly smaller companies.

The only way the Commission can end this oligarchy is to take meaningful steps to create opportunities for minorities, new entrants and smaller carriers to develop significant businesses. The Commission will have no better opportunity than pursuant to its Divestiture Order. The Commission

¹⁹ *Id.* at par. 162.

²⁰ Petition to Dismiss or Deny of the Ad Hoc Public Interest Spectrum Coalition, August 11, 2008 at 5.

²¹ *Id.*, citing Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, FCC 08-28, 23 FCC Rcd 2241, released February 4, 2008.

has the opportunity under the Divestiture Order to oversee the dissemination of the Divestiture Assets into numerous smaller entities, both existing small carriers and new entrants. In the Divestiture Order, the Commission clearly provided VZW notice that it should pursue such transactions. However, VZW flouted the Commission's Divestiture Order, and held a "window dressing" bidding process. Indeed, the blatant manner in which VZW and AT&T chose to carve up the national mobile wireless market demonstrates that VZW and AT&T are attempting to go beyond oligarchy. VZW and AT&T are attempting to move the mobile wireless industry toward a mere duopoly of two companies that will share the entire national wireless market.

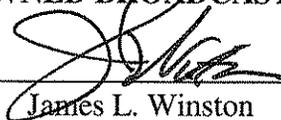
VI. CONCLUSION

NABOB submits that the Commission must reject the effort of VZW and AT&T to carve up the national wireless market between themselves. The Application must be denied, and VZW must be directed to conduct a legitimate bidding process in which minorities, other new entrants and small companies are provided a meaningful opportunity to bid for the Divestiture Assets. Alternatively, the Commission should designate the Application for hearing, pursuant to Section 309(e) to investigate the full extent of the sham perpetrated on the other bidders and the Commission and whether allowing VZW and AT&T to increase their national and local market dominance is in the public interest.

Respectfully submitted,

**THE NATIONAL ASSOCIATION OF BLACK
OWNED BROADCASTERS, INC.**

By: _____



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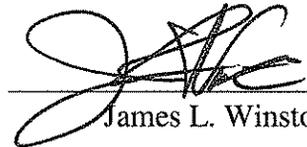
July 20, 2009

DECLARATION

I, James L. Winston, serve as the Executive Director and General Counsel of the National Association of Black Owned Broadcasters, Inc. I have prepared the foregoing Petition to Deny, and am familiar with the factual assertions made therein.

I declare, under penalty of perjury that the facts contained in the foregoing Petition to Deny are true and accurate to the best of my knowledge, information and belief.

Date: July 20, 2009



James L. Winston

CERTIFICATE OF SERVICE

I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P., do hereby certify that on July 20, 2009, true copies of the foregoing "Petition to Deny" were mailed, first class U.S. mail, postage pre-paid to the following:

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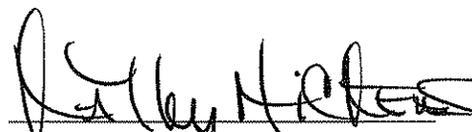
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July 20, 2009