BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	**)**	
	)	**WT Docket No. 09-104**
Applications of AT&T Inc. and	**)**	**DA 09-1350**
Verizon Wireless	**)**	
	)	
for Consent to the Assignment or	**)**	**File Nos. 0003840313 et al.**
Transfer of Control	**)**	**File Nos. ITC-ASG-20090552-00244 et al.**
of Licenses and Authorizations	**)**	
and to Modify a Spectrum	**)**	
Leasing Arrangement	**)**	

JOINT OPPOSITION OF AT&T INC. AND VERIZON WIRELESS TO PETITIONS TO DENY OR TO CONDITION CONSENT AND REPLY TO COMMENTS

William R. Drexel
John J. O'Connor
G. Troy Hatch
Elefteris Velesiotis
AT&T Inc.
1010 N. St. Mary's Street
Room 1410
San Antonio, TX 78215
Telephone: (210) 351-5360

Gary L. Phillips
Michael P. Goggin
AT&T Inc.
1120 Twentieth Street, NW, Ste. 1000
Washington, D.C. 20036
Telephone: (202) 457-3055

John T. Scott, III
Michael Samsock
Verizon Wireless
1300 Eye Street, NW
Suite 400 West
Washington, D.C. 20005
Telephone: (202) 589-3740

July 30, 2009

Of Counsel:

Arnold & Porter LLP
555 Twelfth Street, NW
Washington, D.C. 20004
Telephone: (202) 942-6060

Nancy J. Victory
Catherine M. Hilke
Wiley Rein LLP
1776 K Street, NW
Washington, D.C. 20006
Telephone: (202) 719-7000

SUMMARY

The few opponents to this transaction have not meaningfully challenged the public interest benefits identified in the Public Interest Statement filed by AT&T and Verizon Wireless. The transaction substantially satisfies the divestiture obligations imposed on Verizon Wireless as a condition of its merger with ALLTEL and preserves competition that the Commission and DOJ were concerned might have been lost in the affected CMAs as a result of that merger. The transaction also enables AT&T to bring to consumers in 79 CMAs in primarily rural areas — where it currently has little or no presence — greater resources, choices of services, diverse rate plans, handsets with advanced capabilities, head-to-head competition between the two largest national carriers, expanded network coverage and improved 3G networks.

Contrary to the unsubstantiated claims of certain opponents, the transaction will not harm competition in any relevant market. The wireless industry is highly competitive. This transaction will not diminish that competition nationally or in any affected CMA. Rather AT&T's entry into many of these markets will stimulate competition as AT&T will compete vigorously against Verizon Wireless and other wireless carriers in these areas.

The Commission should reject a proposal to require AT&T to maintain a CDMA network after the transaction as it has rejected similar proposals in other transactions. Such a condition would improperly dictate AT&T's technology choice and is unnecessary given the presence of one or more other CDMA networks in each CMA.

The transaction opponents' other assertions are equally without merit. As to claims that the properties should have been sold to different buyers, the Communications Act forbids the Commission from considering whether the public interest would be better served by another party acquiring the divestiture assets. Further, Verizon Wireless conducted an open bidding

process, specifically encouraged minority and socially disadvantaged businesses to participate in that process, and made efforts to involve such entities at each stage, just as the Commission encouraged it to do in the *Verizon/ALLTEL Order*. In addition, arguments that concern the wireless industry generally, such as proposals to extend automatic roaming or ban exclusive handset arrangements, and issues related to the Commission's approval of the Verizon Wireless/ALLTEL merger are not pertinent to this transaction and are being considered in other proceedings. Finally, there is no basis to review these applications for trafficking violations.

In light of the public interest benefits and the absence of any credible evidence of competitive harm, the Commission should approve this transaction quickly and without conditions.

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Attachments

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I. Introduction

AT&T Inc. ("AT&T") and Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") demonstrated in their Public Interest Statement that the proposed transaction will implement government-mandated divestitures, provide myriad additional public interest benefits, especially for rural consumers, and enhance competition in the delivery of mobile services. Petitioners and Commenters have failed to refute the benefits or demonstrate any harm to competition from this transaction. Those parties' other claims against the transaction, including challenges to the divestiture process and proposed conditions that are not specific to this merger,

are meritless.[1] The Commission should deny the requests in those pleadings and grant the applications promptly and without conditions.[2]

II. The Transaction Will Produce Numerous Public Interest Benefits

Applicants demonstrated in the Public Interest Statement that, in addition to substantially satisfying Verizon Wireless's divestiture obligations under the *Verizon/ALLTEL Order*, the transaction will generate numerous, significant public interest benefits, particularly for rural

[1] There is no basis for the Commission to designate the applications for a hearing, as National Association of Black Owned Broadcasters, Inc. ("NABOB") and Cellular South, Inc. ("Cellular South") request. *See* Petition to Deny of the National Association of Black Owned Broadcasters, Inc., at 8-10 (filed July 20, 2009) ("NABOB Petition"); Petition to Deny of Cellular South, Inc., at 11, 15 (filed July 20, 2009) ("Cellular South Petition"). No substantial and material question of fact has been raised which would require an evidentiary hearing into the public interest benefits of the transaction. *See* 47 U.S.C. § 309(e) (stating that a substantial and material question must be raised before the FCC is required to hold a hearing in lieu of a grant).

[2] The Commission also should dismiss the Petition for Expedited Reconsideration filed by Cellular South. *See* Petition for Expedited Reconsideration of Cellular South, Inc. (filed July 20, 2009) ("Cellular South Ex Parte Petition"). The Commission rejected similar claims raised by Cellular South in the Verizon/ALLTEL merger proceeding and made clear that the Wireless Telecommunications Bureau has the authority pursuant to Section 1.1200(a) of the Commission's rules to assign the permit-but-disclose procedures to a merger proceeding. *In re Applications of Cellco P'ship d/b/a Verizon Wireless & Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations & Spectrum Manager &* De Facto *Transfer Leasing Arrangements & Petition for Declaratory Ruling That the Transaction Is Consistent with Section 310(b)(4) of the Commc'ns Act*, Memorandum Opinion and Order, 23 FCC Rcd. 17,444, 17,540-41, ¶¶ 219-20 (2008) ("*Verizon/ALLTEL Order*"), *recons. pending, appeal dismissed sub. nom. EMR Policy Inst.* v. *FCC*, Case No. 08-1383, 2009 U.S. App. LEXIS 9632 (D.C. Cir. Apr. 24, 2009) (per curiam). Cellular South also complains that the Commission's standard issuance of a protective order when it anticipates the filing of trade secrets or commercially or financially sensitive information violates the Freedom of Information Act, 5 U.S.C. § 552. *See* Cellular South Ex Parte Petition at 14-21. This practice, however, is fully consistent with the statute. The Commission's protective orders reflect a careful balancing between the public and private interests in protecting competitively sensitive information that is submitted to the Commission, on the one hand, and the due process rights of other parties and the interest of the public in access to information, on the other. *See In re Examination of Current Policy Concerning the Treatment of Confidential Info. Submitted to the Comm'n*, Report and Order, 13 FCC Rcd. 24,816, 24,823-24, 24,831-32, ¶¶ 9, 21-23 (1998).

consumers.[3] AT&T will bring to consumers in 79 CMAs, where it currently has little or no presence, expanded choices of services and features, diverse rate plans and handsets with advanced capabilities, all provided by a carrier with greater technical and financial resources than ALLTEL. It will permit those consumers to enjoy the benefits of vigorous competition. As a result of AT&T's entry into many of these CMAs, AT&T will compete head-to-head with Verizon Wireless as well as the other competitors in this territory.[4] The transaction also will enable AT&T to expand network coverage and improve 3G networks for rural communities and to bring its unique disaster recovery capabilities to these areas.[5] These benefits are real and substantial and consistently have been found by the Commission to satisfy the relevant public interest standard.[6] No one has put forth any legitimate reason for denying consumers these improvements.

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[3] *See* Description of the Transaction, Public Interest Showing, and Related Demonstrations, at 10-19 (filed May 22, 2009; amended June 5, 2009) ("Public Interest Statement").

[4] *Id.* at 11-12, 15-18.

[5] *Id.* at 13-14, 18-19.

[6] *See, e.g.*, *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,497-99, 17,502-04, 17,507-09, 17,515, ¶¶ 119, 122-23, 128-32, 136, 140-42, 156; *In re Applications of Cellco P'ship d/b/a Verizon Wireless & Rural Cellular Corp. for Consent to Transfer Control of Licenses, Authorizations & Spectrum Manager Leases & Petitions for Declaratory Ruling That the Transaction Is Consistent with Section 310(b)(4) of the Commc'ns Act*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd. 12,463, 12,504-12, ¶¶ 91-109 (2008) ("*Verizon/RCC Order*"); *In re Applications of AT&T Inc. & Dobson Commc'ns Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd. 20,295, 20,332-33, 20,335, ¶¶ 78-79, 84 (2007) ("*AT&T/Dobson Order*"); *In re Applications of Midwest Wireless Holdings, L.L.C. & ALLTEL Commc'ns, Inc. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 21 FCC Rcd. 11,526, 11,564, 11,566, 11,568, ¶¶ 105, 110, 116-18 (2006) ("*Midwest/ALLTEL Order*"); *In re Applications of Nextel Commc'ns, Inc. & Sprint Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13,967, 14,015-16, ¶¶ 132-36 (2005) ("*Sprint/Nextel Order*"); *In re Applications of W. Wireless Corp. & ALLTEL Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13,053, 13,102-06,

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III. The Transaction Will Not Harm Competition

This transaction is being undertaken to fulfill divestiture conditions imposed by the Commission in the *Verizon/ALLTEL Order* and the Final Judgment in *United States* v. *Verizon Communications Inc*. Far from reducing competition, the express purpose of these divestitures is to replace any competition that the Commission and DOJ were concerned might have been lost in the affected CMAs as a result of Verizon's purchase of ALLTEL. Moreover, Applicants demonstrated in the Public Interest Statement that the transaction poses no threat to competition, and nothing in the transaction opponents' rhetoric about a "wireless duopoly" meaningfully calls this into question. The fact is that the wireless industry is highly competitive, and this transaction will not diminish that vigorous competition either nationally or in any CMA. Indeed, this transaction will enhance competition.

A. The Transaction Will Not Affect the Fierce Competition at the National Level

At the national level, the wireless industry is fiercely competitive,[7] with nine independent companies each serving more than four million retail customers,[8] the least concentrated in the

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13,111-12, ¶¶ 138-43, 158 (2005) ("*ALLTEL/Western Wireless Order*"); *In re Applications of AT&T Wireless Servs., Inc. & Cingular Wireless Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd. 21,522, 21,599-609, 21,611, ¶¶ 202-203, 207-229, 236 (2004) ("*Cingular/AT&T Wireless Order*"), *recons. denied*, Order on Reconsideration, 20 FCC Rcd. 8660 (2005) ("*Cingular/AT&T Wireless Reconsideration Order*").

[7] *In re Implementation of* Section *6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report & Analysis of Competitive Mkt. Conditions with Respect to Commercial Mobile Servs.*, Thirteenth Report, 24 FCC Rcd. 6185, 6199, ¶ 14 (2009) ("*Thirteenth Report*").

[8] Letter of 07/08/09 from James W. Cicconi, Senior Executive Vice-President, External and Legislative Affairs, AT&T Inc., to Honorable Herbert H. Kohl, Chairman, Subcommittee on Antitrust, Competition Policy and Consumer Rights, Committee on the Judiciary, United States Senate, at 1, *available at* http://www.att.com/Common/about_us/public_policy/Kohl_Letter-8July2009.pdf.

industrialized world.[9] Wireless usage has increased tenfold since 2000, revenue per minute has fallen 87 percent since 1994, and U.S. wireless prices are lower than in any other developed country.[10] More than 95 percent of the U.S. population lives in census blocks with at least three competing wireless carriers, and nearly two thirds of the population lives in census blocks with at least five competing carriers.[11] As the Commission has noted, "U.S. consumers continue to reap significant benefits — including low prices, new technologies, improved service quality, and choice among providers — from competition in the CMRS marketplace."[12] This transaction, which affects less than one percent of wireless customers nationwide, will only intensify that competition by enabling improved service and greater economies of scale.

Unable to dispute these facts, the opponents of this transaction instead complain about "behemoths"[13] who "divide the assets of their conquered foe."[14] Amid all the rhetoric, there is, however, a telling admission: this transaction will increase the variety of wireless services and technology choices available to consumers while putting downward pressure on prices.[15] As

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[9] CTIA — The Wireless Association®, *The United States & World Wireless Markets: Competition and Innovation Are Driving Wireless Value in the U.S.*, at 6-7 (May 2009) ("*CTIA Study*") *in In re Skype Commc'ns' Petition to Apply Carterphone Attachment Regulations to the Wireless Indus.*, Letter of 05/12/09 from Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA — The Wireless Association®, to Marlene H. Dortch, Secretary, FCC.

[10] *CTIA Study* at 3-4, 9; *Thirteenth Report*, 24 FCC Rcd. at 6276, 6288, ¶¶ 192, 218.

[11] *Thirteenth Report*, 24 FCC Rcd. at 6189, ¶ 2.

[12] *Id.* at 6189, ¶ 1.

[13] NABOB Petition at 7.

[14] Petition to Deny of the Rural Telecommunications Group, Inc., at i (filed July 20, 2009) ("RTG Petition").

[15] *See, e.g.*, Cellular South Petition at iii ("If it is permitted to compete with Cellular South, AT&T will be able to offer customers handsets with a variety of features that ALLTEL was not able to offer and Cellular South cannot offer."); *id.* at 4-5 ("If AT&T's claim that it will be 'a more vibrant competitor' than ALLTEL proves to be true, the increased competition can be

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Cellular South notes, "AT&T promises to be a stronger competitor than ALLTEL."[16] Indeed, AT&T is a fierce competitor and will continue to compete vigorously after this transaction, now on an even larger landscape. Recent history shows that competition between Verizon Wireless and AT&T has driven each company in efforts to surpass the other,[17] through investments and innovations, among other dimensions.[18] Consequently, as RTG says, other carriers may be

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expected to cause Cellular South to sustain economic injury."); *id.* at 6 ("Cellular South is likely to suffer injury-in-fact if it is forced to compete with AT&T and VZW."); *see also* Petition of NTELOS Inc. to Condition Consent or Deny Application, at 5 (filed July 20, 2009) ("NTELOS Petition") (complaining of new high-bandwidth services being developed for wireless customers).

[16] Cellular South Petition at 6.

[17] For instance, when AT&T achieved success with the iPhone, Verizon Wireless promoted its own touch-screen Blackberry device which was touted as Verizon's "iPhone Killer." Jeffrey Bartash, *AT&T Wields iPhone to Battle Verizon*, Marketwatch, June 29, 2007, *available at* http://www.marketwatch.com/story/att-wields-iphone-to-battle-verizon-200762914100; Reuters, *Verizon Bets on RIM's Blackberry Storm as Apple iPhone Killer*, Channelinsider.com, Nov. 20, 2008, *available at* http://www.channelinsider.com/c/a/ Messaging-and-Collaboration/Verizon-Bets-on-RIMs-Blackberry-Storm-as-Apple-iPhone-Killer/. On May 27, 2009, AT&T announced its plan to use High Speed Packet Access (HSPA) 7.2 technology to boost the speeds of its 3G network and to begin LTE trials in 2010, with deployment in 2011. Press Release, AT&T Inc., AT&T to Deliver 3G Mobile Broadband Speed Boost (May 27, 2009), *available at* http://www.att.com/gen/press-room?pid=4800&cdvn=news &newsarticleid=26835. Two days later, Verizon Wireless's CEO, Lowell McAdam, responded with Verizon's plans to surpass AT&T's speed. Karl Bode, *Verizon Takes Shots at AT&T Wireless Networks*, DSLReports.com, May 29, 2009, *available at* http://www.dslreports.com/ shownews/Verizon-Takes-Shots-At-ATT-Wireless-Networks-102663.

[18] Recent investment and innovations by AT&T and Verizon Wireless also are consistent with those of entities subject to intense competition. *See An Examination of Competition in the Wireless Indus.: Before the Subcomm. on Communications, Technology and the Internet of the H. Comm. on Energy and Commerce*, 111th Cong. (2009) (statement of AT&T Inc. at 2) ("AT&T Congressional Statement") (describing $38 billion investment in wireless and wireline networks in past two years, 2009 capital expenditures of $17 billion, continued deployment of 3G technology, establishment of tens of thousands of Wi-Fi hot spots free to AT&T customers, and numerous consumer-centric policies and product options); *An Examination of Competition in the Wireless Indus.: Before the Subcomm. on Communications, Technology and the Internet of the H. Comm. on Energy and Commerce*, 111th Cong. (2009) (statement of Verizon Wireless at

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forced to "lower retail prices" in order to "realistically compete."[19] While this further intensification of competition may create challenges for some carriers — and explain their opposition to this transaction — it is good for consumers and manifestly in the public interest. As is often noted, the Commission's "statutory duty is to protect efficient competition, not competitors."[20]

RTG contends that any such price reductions will be part of a predatory pricing scheme.[21] This claim is neither supported nor credible. Economic theory teaches that predatory pricing can be a successful strategy only under specific circumstances and thus is rarely attempted.[22] Opponents make no attempt to demonstrate why predatory price decreases would be economically rational under the existing competitive market conditions. Nor, contrary to RTG's suggestion,[23] is it predatory merely to price below a less-efficient competitor's cost.[24]

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8-9) (describing investment of billions of dollars in major 3G network upgrades, construction and deployment of 4G network, using 700 MHz spectrum for which Verizon Wireless paid nearly $9 billion).

[19] RTG Petition at 8.

[20] *In re AT&T Inc. & BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, 5759, ¶ 195 (2007) ("*AT&T/BellSouth Order*"), *recons. denied*, Memorandum Opinion and Order, 23 FCC Rcd. 15,040 (2008); *In re SBC Commc'ns Inc. & AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18,290, 18,371, ¶ 151 (2005) ("*SBC/AT&T Order*").

[21] RTG Petition at 8.

[22] *See In re Applications of VoiceStream Wireless Corp., Powertel Inc. & Deutsche Telekom AG*, Memorandum Opinion and Order, 16 FCC Rcd. 9779, 9828-29, ¶ 88 (2001) (quoting *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 589 (1986)) ("The success of any predatory pricing scheme depends on *maintaining* monopoly power for long enough to recoup the predators' losses and to harvest some additional gain . . . . For this reason, there is consensus . . . that predatory pricing schemes are rarely tried, and even more rarely successful.") (emphasis in original).

[23] RTG Petition at 7-9.

B. The Transaction Will Not Diminish Competition in Any CMA

The transaction's benign effects on competition are evident not only at the national level, but also in each affected CMA. As the Public Interest Statement explained, AT&T does not currently provide service in 49 of the 79 CMAs affected by this transaction and thus will be a new entrant in these areas.[25] In the remaining CMAs, AT&T's presence is minor, and this transaction will not reduce the intensity of competition in these CMAs.[26]

Once again, the transaction opponents have little to say in response, and what they do offer is incorrect. RTG, for example, is mistaken when it suggests that this transaction will diminish competition in Montana, North and South Dakota and Wyoming.[27] AT&T currently offers little or no retail wireless service in these states, and therefore this transaction will not meaningfully change the number of competitors in these states. If anything, the transaction will intensify competition by replacing a regional carrier, ALLTEL, with a national carrier, AT&T. RTG also is mistaken when it claims that Sprint and T-Mobile are "noticeably absent from many of these 79 CMAs."[28] Sprint and T-Mobile hold spectrum in every single one of these 79

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[24] *See In re Applications for Consent to the Transfer of Control of Licenses & Section 214 Authorizations from Tele-Commc'ns Inc. to AT&T Corp.*, Memorandum Opinion and Order, 14 FCC Rcd. 3160, 3214, ¶ 115 n.324 (1999) (citing *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 222-23 (1993)) ("A claim of predatory pricing consists of two prongs: 1) that the alleged predator's prices are below an appropriate measure of *its* costs; and 2) that the predator must have a reasonable expectation of recovering, in the form of later monopoly profits, more than the losses suffered.") (emphasis added).

[25] Public Interest Statement at 19.

[26] *Id.*

[27] RTG Petition at 7.

[28] *Id.* at 8.

CMAs.[29] Further, Sprint offers service in part or all of more than 60 of these CMAs and, with its affiliates, holds more spectrum than any other carrier, including AT&T and Verizon Wireless, in most of the 79 CMAs. T-Mobile likewise offers service in part or all of more than 20 CMAs.

The transaction also creates no spectrum aggregation concerns in any CMA affected by this transaction. As noted in the Public Interest Statement, the Commission's initial spectrum screen is not even reached in 77 of the 79 CMAs and is barely exceeded in parts of the other two. Numerous competitors and potential competitors hold spectrum in those two CMAs, thus rendering any competitive concerns invalid.[30] Moreover, the facts belie NTELOS's claims that "mid-tier regional and rural carriers" are being "choked off by a lack of meaningful access to spectrum."[31] Small, rural and regional carriers collectively hold an average of approximately 126 MHz in the 79 CMAs.[32] Indeed, NTELOS itself is an example of the diversity of spectrum holdings in these CMAs. It holds spectrum (20 or 30 MHz) in three CMAs involved in this transaction — CMA262-Danville, CMA681-Virginia 1 and CMA688-Virginia 8[33] and operates a

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[29] Public Interest Statement at 21 & App. B.

[30] *Id.* at 21-22 & n.52.

[31] *See* NTELOS Petition at 4.

[32] *See* Public Interest Statement, App. B. The average collective holdings of small, rural and regional carriers were calculated by summing the cellular, broadband PCS, AWS and 700 MHz spectrum held by carriers other than AT&T, Sprint, T-Mobile and Verizon Wireless in each county, as depicted in Appendix B to the Public Interest Statement. That sum was multiplied by the county's 2000 census population to calculate a MHz-POPs figure for each county. Those MHz-POPs figures were summed across all 79 CMAs and then divided by the total 2000 census populations of the 79 CMAs to find the population-weighted mean collective holdings of small, rural and regional carriers across the divested territory.

[33] *See* Public Interest Statement, App. B. NTELOS has spectrum in all of CMA 262 and CMA688 and in part of CMA681. *Id*.

wireless business in CMA262. Nor, contrary to NTELOS's suggestion,[34] are smaller carriers excluded from the lower spectrum bands. Licensees of 700 MHz spectrum in these three CMAs include US Cellular, Appalachian Wireless, Buggs Island Telephone Cooperative, Continuum 700 and Cavalier.[35] Moreover, the Lower 700 MHz B Block license for CMA681 remains available.[36] Finally, NTELOS is in no position to complain about lack of access to spectrum as it did not even apply to participate in Auction 73.[37]

In sum, the transaction will not diminish competition in any CMA. Rather, it will enhance the fierce competition among carriers, including AT&T and Verizon Wireless, that has impelled them to innovate and invest. Consumers will continue to realize substantial benefits from this competition.

IV. Petitioners' Requests for Roaming Conditions Should Be Rejected

The Commission should reject Sprint's request to require AT&T to maintain a CDMA network as well as the roaming conditions Sprint and others propose.[38] Not only would such conditions improperly dictate AT&T's choice of technology, but they are also unnecessary given

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[34] *See* NTELOS Petition at 5.

[35] *See* Public Interest Statement, App. B. Qualcomm and EchoStar also hold 700 MHz spectrum. Other broadband PCS and AWS licensees in the CMAs include Leap, SpectrumCo (a joint venture that includes Comcast and Time Warner) and Wirefree Partners. *See id.*

[36] The potentially winning bidder withdrew its bid in Round 30 of Auction 73, and *no other party* bid on the spectrum in the subsequent 231 rounds.

[37] A search of ownership disclosure filings in the Commission's Universal Licensing System database shows that NTELOS neither filed a Form 175 nor was listed on another party's Form 175 filed during the Auction 73 application window.

[38] *See* Comments of Sprint Nextel Corp., at 3-4, 18-19 (filed July 20, 2009) ("Sprint Comments"); RTG Petition at 12-14.

that other CDMA roaming opportunities will continue to be available after the transaction. Moreover, such conditions would be inconsistent with precedent.

A. No Conditions Should Be Imposed on AT&T's Choice of Wireless Technology

The Commission has rejected in other transactions, including in the *Verizon/ALLTEL Order*, proposed conditions to preserve for a particular time, or to divest, a network using a particular technology,[39] or to dictate the nature and terms of services to be offered after the transition to a new technology.[40] There is no basis to depart from that precedent here. Requiring AT&T to maintain a CDMA network would be inconsistent with the Commission's policy of giving carriers discretion in choosing technology and "generally . . . not mandat[ing] a particular type of technology, leaving such an outcome to the marketplace."[41] Indeed, the Commission's

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[39] *See Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,525, ¶ 179 (declining to require Verizon to maintain ALLTEL's GSM network for a specified period of time); *id.* at 17,518, ¶¶ 161-162; *Verizon/RCC Order*, 23 FCC Rcd. at 12,513, ¶ 114. In the *Verizon/ALLTEL Order*, in accordance with its "long-standing principle," the Commission "decline[d] to dictate" the technology choice of the divestee. *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,518, ¶ 162 & n.570. Sprint, which declined to participate in the Verizon/ALLTEL proceeding, has no standing to ask the Commission to reconsider that decision, *see* 47 C.F.R. §§ 1.104(b), (d), 1.106(f), and, by raising the issue in this docket, is making an improper collateral attack on the earlier decision. *See In re Motions for Declaratory Ruling Regarding Comm'n Rules & Policies for Frequency Coordination in the Private Land Mobile Radio Servs.*, Memorandum Opinion and Order, 14 FCC Rcd. 12,752, 12,757-58, ¶ 11 (1999) (citing *MCI Telecomms. Corp.* v. *Pac. Nw. Bell Tel. Co.*, Memorandum Opinion and Order, 5 FCC Rcd. 216, 221, ¶ 41 n.38 (1990), *recons. denied*, 5 FCC Rcd. 3462 (1990), *appeal dismissed sub nom. Mountain States Tel. & Tel. Co.* v. *FCC*, 951 F.2d 1259 (10th Cir. 1991) (per curiam)).

[40] *See Verizon/RCC Order*, 23 FCC Rcd. at 12,518-19, ¶ 130 (declining to condition approval on dictating the nature and terms of the services to be offered).

[41] *In re Amendment of Part 2 of the Comm'n's Rules to Allocate Spectrum Below 3 GHz for Mobile & Fixed Servs.*, Notice of Proposed Rulemaking and Order, 16 FCC Rcd. 596, 606, ¶ 21 (2001) ("The Commission traditionally has taken a flexible approach to standards and generally does not mandate a particular type of technology, leaving such an outcome to the marketplace."); *see also Verizon/RCC Order*, 23 FCC Rcd. at 12,513, ¶ 114 ("[I]t is the Commission's long-standing policy not to dictate licensees' technology choices."); *In re Applications of ALLTEL Corp. & Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Leases &*

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hands-off approach has led to the deployment of "a variety of different technologies with divergent migration paths," and this diversity is "an important dimension of non-price rivalry in the U.S. mobile telecommunications market and a distinctive feature of the U.S. mobile industry model."[42]

Further, Sprint's concern that the transition will not be smooth for consumers[43] is unfounded. AT&T has significant experience in transitioning customers from one technology to another, including transitioning customers from one network standard to another.[44] In particular, AT&T has considerable experience in transitioning CDMA properties into its existing network technology.[45] Based on prior experience, AT&T will have customer policies in place to facilitate the transition and ensure the transition is seamless and without interruption to service. In a

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Authorizations, Memorandum Opinion and Order, 22 FCC Rcd. 19,517, 19,518-19, ¶¶ 4-6 & n.26 (2007) (rejecting a proposed condition citing the Commission's policy not to dictate what technology a licensee uses).

[42] *Thirteenth Report*, 24 FCC Rcd. at 6250, ¶ 126.

[43] *See* Sprint Comments at 9-10.

[44] *See, e.g.*, *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21,606-07, ¶¶ 223-24 (discussing the need to transition customers from the TDMA network to the GSM network to provide enhanced service); AT&T Inc., Annual Report (Form 10-K), at 28, 35 (Mar. 1, 2006) (discussing the integration of GSM, the decommissioning of the TDMA network, and the transitioning of technologies in order to "provide a common voice standard").

[45] *See generally, e.g.*, File Nos. 0003264825 et al. (AT&T acquisition, consummated in 2008, of certain wireless licenses held by subsidiaries of Rural Cellular Corporation in Vermont and New York); File Nos. 0000182389 et al. (acquisition by SBC Communications, consummated in 2000, of wireless licenses held by certain GTE affiliates in Texas and Washington); Nancy Gohring, *SBC to Scrap Ameritech Network*, TelephonyOnline, Jan. 24, 2000, *available at* http://telephonyonline.com/mag/telecom_sbc_scrap_ameritech/.

recent transaction, the Commission recognized the importance of such experience in assuaging similar customer transition concerns and also should do so here.[46]

B. CDMA Roaming Opportunities Will Continue to Be Available, and GSM Roaming Opportunities Will Expand, After the Transaction

Sprint's concern about a lack of CDMA roaming partners[47] is unwarranted. Verizon Wireless will continue to be a potential CDMA roaming partner in every CMA involved in this transaction and other carriers (at least 16 carriers across the 79 CMAs) have CDMA networks.[48] These carriers will have strong incentives to enter into reciprocal roaming agreements, expand coverage or fill in coverage gaps to meet consumer demand for nationwide coverage.[49] Far from reducing roaming opportunities for other carriers' customers, the transaction actually will enhance them, with AT&T expanding the availability of GSM coverage, including that for roaming.[50]

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[46] *See Verizon/RCC Order*, 23 FCC Rcd. at 12,519, ¶¶ 131-32 (declining to require Verizon to provide greater detail regarding its plans for converting RCC customers from the existing GSM network to CDMA).

[47] *See* Sprint Comments 10-13.

[48] *See* Public Interest Statement, App. B; *see also* CDMA Development Group, CDMA Worldwide: North America, http://www.cdg.org/worldwide/index.asp?h_area=4 (last visited July 27, 2009).

[49] *See Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21,589-90, ¶ 176 ("[C]ompetition and the need to generate revenues prevent nationwide carriers from refusing to enter into roaming agreements" with other carriers or increasing rates above competitive levels.).

[50] In supporting its request, Sprint can point to only one transaction in which the Commission has mandated that the combined company offer roaming services to other carriers in a manner not required by the rules. The Verizon/ALLTEL merger was unique in that parties expressed concerns that there would be no GSM roaming partner *at all* in certain CMAs after the transaction. Moreover, the Commission rejected requests to impose roaming conditions beyond the voluntary commitment offered by Verizon Wireless. *See Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,523-25, ¶¶ 176, 178-81. There certainly is no basis for the Commission to impose a roaming condition in this case where a CDMA roaming option will remain in every CMA after closing.

In any case, the focus of the Commission's review with respect to roaming is not on whether a transaction will "have an adverse effect on roaming arrangements" — including the continuation of a specific technology — but whether it will "cause competitive harm due to a reduction of the number of competitors in general."[51] The Commission has emphasized that "competition in the retail market is sufficient to protect consumers against potential harm arising from intercarrier roaming arrangements and practices."[52] As demonstrated in the Public Interest Statement and discussed above, the proposed transaction preserves retail competition in every area and does not result in any competitive harm. Thus, competition will continue to thrive with the presence of alternative CDMA carriers and others that hold licensed spectrum, which should resolve any concerns that consumers will be harmed as a result of alleged reductions in roaming competition.

C. Sprint and Other Carriers Can Build Out CDMA Facilities

If there were a need for more CDMA coverage in certain areas of the affected CMAs, Sprint and other licensees using CDMA technology have sufficient spectrum to build out their networks further.[53] The Commission should reject the claims of Sprint that unprecedented roaming obligations are necessary because carriers other than AT&T and Verizon Wireless do

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[51] *See, e.g.*, *AT&T/Dobson Order*, 22 FCC Rcd. at 20,327, ¶ 65-66; *In re Sprint-Nextel Corp. & Clearwire Corp. Application for Consent to Transfer Control of Licenses, Leases & Authorization*, Memorandum Opinion and Order, 23 FCC Rcd. 17,570, 17,606, ¶ 91 (2008) ("*Sprint/Clearwire Order*"); *Verizon/RCC Order*, 23 FCC Rcd. at 12,503, ¶ 88-89; *In re Reexamination of Roaming Obligations of Commercial Mobile Radio Serv. Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 15,817, 15,822, ¶ 13 (2007) ("*Roaming Order*"); *Midwest/ALLTEL Order*, 21 FCC Rcd. at 11,563-64, ¶ 104; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21,591, ¶ 180.

[52] *See Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,525, ¶ 179; *Verizon/RCC Order*, 23 FCC Rcd. at 12,503, ¶ 88; *Roaming Order*, 22 FCC Rcd. at 15,822, ¶ 13.

[53] *See* Public Interest Statement, App. B.

not have the capital to build out their spectrum in rural areas.[54] Sprint seems to have adopted a strategy of amassing cash[55] and investing in other areas, such as acquiring a prepaid wireless business,[56] rather than deploying capital to expand service to its customers in rural areas. Investments in rural networks are economically feasible — as the Commission has observed, carriers "have invested considerable resources for the provision of wireless service" in rural areas.[57] While AT&T, Verizon Wireless *and* other carriers invest in rural networks,[58] Sprint has

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[54] *See* Sprint Comments at 13-17. Nor is Sprint correct that the divested CDMA network is an "essential facility," *see* Sprint Comments at 13, as two carriers already have built in the CMAs covered by these networks.

[55] News Release, Sprint Nextel Corp., Sprint Nextel Reports Second Quarter 2009 Results, at 1 (July 29, 2009), *available at* http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-newsArticle_newsroom&ID=1313470&highlight= (reporting that Sprint has $4.6 billion in cash on hand).

[56] News Release, Sprint Nextel Corp., Sprint Nextel to Acquire Virgin Mobile USA (July 28, 2009), *available at* http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-newsArticle_newsroom&ID =1312854&highlight=.

[57] *Thirteenth Report*, 24 FCC Rcd. at 6239-40, 6242-43, ¶¶ 105, 109. Because national carriers have the resources to build out their networks rapidly, the Commission accepted the exclusion of national carriers from Verizon Wireless's voluntary roaming commitments in the *Verizon/ALLTEL Order*. *See Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,524, ¶ 178. Sprint has no basis in this proceeding for seeking to extract commitments that would benefit national carriers.

[58] *See, e.g.*, *Thirteenth Report*, 24 FCC Rcd. at 6239-40, ¶ 105 (citing CTIA 2008 Comments, at 11); *In re Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report & Analysis of Competitive Mkt. Conditions with Respect to Commercial Mobile Servs.*, WT Dkt No. 09-66, Comments of CTIA — The Wireless Association®, at 15-17 (filed June 15, 2009) (explaining that "carriers across the country are deploying mobile data services and broadband technologies outside of major metropolitan areas, including rural markets, to bring new technologies and faster speeds to consumers" and that "[c]ompanies like Alaska Communications Systems, Bluegrass Cellular, Cellular South, General Communication Inc. (through its Alaska DigiTel and Alaska Wireless brand), Nex-Tech Wireless, nTelos, and Stelera Wireless have been deploying high-speed wireless broadband networks and solutions for customers in markets across the country.") (citations omitted); *id.* at 12-13, n.26 (explaining that "wireless carriers large and small collectively invest billions of dollars each year to improve the coverage, quality and capacity delivered by their networks," and citing to such efforts by various carriers across the country, including in rural areas); *In re Implementation of Section 6002(b) of*

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chosen to starve capital investment — it made wireless capital expenditures of only $197 million in the first quarter and $227 million in the second quarter.[59] The Commission should not expand the scope of roaming obligations and allow Sprint to free-ride on the investments that others have made and continue to make in their networks.

D. The Proposed Conditions Are Inconsistent with Precedent

The proposed conditions also would be inconsistent with the Commission's roaming rules in that they would require AT&T to provide Sprint and other carriers with home market and data roaming,[60] which the Commission previously has rejected for good reasons.[61] Specifically, any such conditions would permit wireless providers to choose to free-ride on other competitors' investments rather than invest in their own networks. This would be contrary to the FCC's

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the Omnibus Budget Reconciliation Act of 1993, Annual Report & Analysis of Competitive Mkt. Conditions with Respect to Commercial Mobile Servs., WT Dkt No. 09-66, Reply Comments of AT&T Inc., at 4 (filed July 13, 2009) ("AT&T's wireless expansion into rural areas it previously did not serve has greatly increased the choices available to, and competition for the business of, millions of rural consumers."); *In re A Nat'l Broadband Plan for Our Future*, GN Dkt No. 09-51, Comments of Verizon Wireless on a National Broadband Plan, at 74 (filed June 8, 2009) (describing Verizon Wireless's significant broadband coverage in rural America, which "reaches more than 75 percent of the population living in rural areas").

[59] *See* News Release, Sprint Nextel Corp., Sprint Nextel Reports Second Quarter 2009 Results, at 2 (July 29, 2009), *available at* http://newsreleases.sprint.com/ phoenix.zhtml?c=127149&p=irol-newsArticle_newsroom&ID=1313470&highlight= (reporting year-to-date accrued wireless capital expenditures of $424 million, a 68 percent decline from the same period last year). In previous years, Sprint spent billions of dollars in capital expenditures. *See* Sprint Nextel Corp., Annual Report (Form 10-K), at F-46 (Feb. 27, 2009) (showing wireless capital expenditures of $2.386 billion in 2008, $5.067 billion in 2007 and $5.944 billion in 2006). Rather than investing in network coverage, Sprint has decided to decrease its wireless capital spending on the basis of "reduced capacity needs due to fewer subscribers." News Release, Sprint Nextel Corp., Sprint Nextel Reports Second Quarter 2009 Results, at 3 (July 29, 2009), *available at* http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-newsArticle_newsroom &ID=1313470&highlight=.

[60] Sprint Comments at 2, 3-4, 18-19; RTG Petition at 12-14.

[61] *See Roaming Order*, 22 FCC Rcd. at 15,835, ¶ 48.

policy of encouraging "the deployment of wireless services in rural areas."[62] Automatic roaming requirements in such instances would create severe disincentives for investment.[63] As discussed below, these requests raise industrywide concerns that should be addressed in the ongoing Commission proceeding on roaming.

Further, the Commission should reject opponents' efforts to dictate the terms of roaming agreements with AT&T.[64] It is not within the scope of this proceeding to determine contractual rights or responsibilities, or to guarantee any carrier that it will pay a particular rate.[65] Indeed, the *Roaming Order* made clear that the Commission will not get involved in the specific rates set

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[62] *In re Facilitating the Provision of Spectrum-Based Servs. to Rural Areas & Promoting Opportunities for Rural Tel. Cos. to Provide Spectrum-Based Servs.; 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Servs.; Increasing Flexibility to Promote Access to & the Efficient & Intensive Use of Spectrum & the Widespread Deployment of Wireless Servs., & to Facilitate Capital Formation*, Report and Order and Further Notice of Proposed Rule Making, 19 FCC Rcd. 19,078, 19,080, ¶ 2 (2004) ("modify[ing] certain regulations and policies in order to facilitate the deployment of wireless services in rural areas"); Michael J. Copps, Acting Chairman, FCC, *Bringing Broadband to Rural America*, Report on a Rural Broadband Strategy, ¶ 143, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291012A1.pdf (rel. May 22, 2009) ("For a number of years, the Commission's spectrum policies have attempted to promote wireless broadband deployment in rural areas.").

[63] *See Roaming Order*, 22 FCC Rcd. at 15,835, ¶ 49.

[64] *See* Sprint Comments at 3-4; RTG Petition at 12-14.

[65] *AT&T/BellSouth Order*, 22 FCC Rcd. at 5759, ¶ 195; *see also, e.g., In re Verizon Commc'ns, Inc. & MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18,433, 18,512, ¶ 150 (2005) ("*Verizon/MCI Order*"); *SBC/AT&T Order*, 20 FCC Rcd. at 18,371, ¶ 151. Further, private contractual disputes are not relevant to the Commission's public interest analysis. *See, e.g.*, *Sprint/Nextel Order*, 20 FCC Rcd. at 14,033-34, ¶¶ 180-81 (denying request to settle private contractual dispute because it is not relevant to a public interest analysis and should be resolved in court); *Cingular/AT&T Wireless Reconsideration Order*, 20 FCC Rcd. at 8665, ¶ 13 & n.27 (finding issue raised by commenter was a private contractual dispute and not relevant to the Commission's public interest analysis); *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21,551, ¶ 56 & n.222 (finding dispute over partnership rights involved a private contractual matter and was not relevant to a public interest analysis).

forth in roaming agreements freely negotiated in the marketplace, unless a specific complaint is filed with the Commission alleging that such rates are unreasonable and/or discriminatory.[66] The parties to those agreements have negotiated arm's-length roaming agreements, and it would be inappropriate in this proceeding for the Commission to give a carrier any benefits for which it did not bargain.[67]

V. Other Claims Are Meritless

Petitioners also raise a number of other claims that need not detain the Commission long. Chatham Avalon Park Community Council ("CAPCC") and NABOB's attacks on the divestiture process and assertions that Verizon Wireless should have sold the licenses to a minority-owned or socially disadvantaged entity have no basis in the facts or applicable law. Other Petitioners complain about alleged harms that are not transaction-specific.[68] And Cellular South distorts the facts and the rules to urge the Commission to conduct an unnecessary anti-trafficking investigation. Each of these claims lacks merit and should be rejected at the outset.

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[66] *See Roaming Order*, 22 FCC Rcd. at 15,832-33, ¶¶ 37-40 (discussing why the Commission declined to impose any form of rate regulation); *see also Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,524, ¶ 178 (reminding carriers that "if a requesting carrier believes that particular acts or practices relating to roaming are unjust and unreasonable, it may file a complaint with the Commission pursuant to Section 208").

[67] *See AT&T/Dobson Order*, 22 FCC Rcd. at 20,328, ¶ 67 ("[T]he review of the application to transfer control of licenses from Dobson to AT&T is not the appropriate forum for determining other service providers' contractual rights under their roaming agreements with Dobson.").

[68] These Petitioners fail to demonstrate standing to be a party in this proceeding. *See* 47 U.S.C. § 309(d) (requiring a petitioner to be a "party in interest"); 47 C.F.R. § 1.939(a); *see, e.g.*, *ALLTEL/Western Wireless Order*, 20 FCC Rcd. at 13,091, ¶ 104 & n.264 (questioning the standing of RTG and another party to raise roaming concerns). CAPCC fails to identify or to offer evidence to show that its members will be harmed by the transaction. NABOB and RTG attempt to articulate competitive or other harms to their members despite failing to identify the affected members, much less substantiating their claims of harm.

A. Petitioners' Allegations Regarding the Bidding Process Are Irrelevant, Unsupported and Inaccurate

CAPCC and NABOB request that the Commission deny the applications and instead force Verizon Wireless to undertake an entirely new divestiture process pursuant to Commission-imposed requirements that, "at a minimum," would grant unspecified "socially disadvantaged groups" a right of first refusal on all of the properties.[69] These requests lack any legal or factual basis and should be summarily rejected for three independent reasons.

1. The Communications Act Precludes Consideration of the Relief Requested

CAPCC and NABOB essentially complain that the applications should be denied because Verizon Wireless should have divested the properties to other buyers, preferably minority-owned or socially disadvantaged entities. The Communications Act, however, expressly prevents the Commission from considering whether a transfer of a Title III license to another buyer would better serve the public interest.[70] The law on this point is settled: in determining whether an application for transfer of licenses serves the public interest, the Commission may not consider whether sale to a different buyer would be preferable.[71] CAPCC's and NABOB's petitions must be denied on this basis alone.[72]

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[69] NABOB Petition at 6-8; Petition to Deny of Chatham Avalon Park Community Council, at 3-8 (filed July 20, 2009) ("CAPCC Petition").

[70] 47 U.S.C. § 310(d) ("[I]n acting thereon the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.").

[71] *See, e.g.*, *In re Applications of Craig O. McCaw & Am. Tel. & Tel. Co. for Consent to the Transfer of Control of McCaw Cellular Commc'ns, Inc. & Its Subsidiaries*, Memorandum Opinion and Order, 9 FCC Rcd. 5836, 5916-17, ¶¶ 149-50 (1994) ("*McCaw/AT&T Order*"), *aff'd sub nom. SBC Commc'ns Inc.* v. *FCC*, 56 F.3d 1484 (D.C. Cir. 1995) (rejecting NABOB's argument that the FCC cannot approve an assignment application without "a demonstration from the applicants that efforts were made to sell the McCaw-controlled television stations to minority-owned companies"); *In re Applications for Consent to the Assignment &/or Transfer of*

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2. Verizon Wireless Was Not Required to Divest Any Licenses to a Minority or Socially Disadvantaged Group or to Follow Particular Divestiture Procedures

CAPCC and NABOB incorrectly assert that Verizon Wireless was obligated to follow particular procedures — apart from those specified in the Final Judgment — to find buyers for the properties that it was required to divest under the *Verizon/ALLTEL Order*. In fact, the Commission was asked during its consideration of the Verizon/ALLTEL merger to impose conditions on the divestiture process aimed at ensuring that the properties went to minority or socially disadvantaged buyers, but it explicitly *rejected* any such conditions. Specifically, the Commission denied proposals to condition the sale of these assets on the size, ownership or

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Control of Licenses Adelphia Commc'ns Corp. (& Subsidiaries, Debtors-In-Possession) to Time Warner Cable Inc. (Subsidiaries), Memorandum Opinion and Order, 21 FCC Rcd. 8203, 8324, ¶ 285 (2006) (noting that "the Commission must examine whether the transactions before it will serve the public interest without regard to other possible transactions"); *In re MCI Commc'ns Corp. & S. Pac. Telecomms. Co. for Consent to Transfer Control of Qwest Commc'ns, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd. 7790, 7801, ¶ 29 (1997) (citing Section 310(d) and noting that "in the instant transfer proceeding, the Commission was precluded by statute from considering competing, third-party applications").

[72] Petitioners also fail to meet the requirements of Section 309 of the Act and the Commission's rules that petitions to deny must be supported with an affidavit from persons with personal knowledge of the specific facts alleged in the petitions. 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.939(d). For example, NABOB claims that "minority bidders were never given serious consideration as potential purchasers" and that Verizon Wireless "had Morgan Stanley conduct a bidding process that erected barriers to minority participation." NABOB Petition at 6. Similarly, CAPCC argues that Verizon Wireless did not do enough to encourage participation in the bidding process by socially disadvantaged businesses. *See* CAPCC Petition at 3-7. Neither Petitioner, however, provides any support for its conclusory statements either by citation or declaration. The declarations appended to the NABOB and CAPCC Petitions merely affirm the truth of the alleged facts in the petitions without establishing that the declarants have any "personal knowledge" upon which to base such affirmations. Instead, they rely on hearsay, such as information Verizon Wireless allegedly told "Capitol Hill personnel," CAPCC Petition at 10; the "word on the street" and the "message" about the bidding process, and "rumors" about a Verizon Wireless and AT&T deal. NABOB Petition at 6-7. Such statements are not sufficient to support a petition to deny.

business plan of the acquirer or on a right of first negotiation for minority or socially disadvantaged groups.[73] Petitioners' request that the divestiture process be redone, and to include — at a minimum — a right of first refusal for certain groups, flies in the face of the Commission's own decision. It merely reargues a request that the Commission already rejected.

Equally invalid is CAPCC's demand that the Commission "investigat[e] the facts and circumstances surrounding this transaction."[74] NABOB makes a similar request.[75] Given that there is no provision of the Act, the Commission's rules or the *Verizon/ALLTEL Order* that imposes requirements on the manner in which Verizon Wireless entered into transactions to sell the properties or with whom it could communicate before or during that process, there is no basis for any such compliance investigation.

The Commission did "*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*."[76] This statement is not a condition on the merger and, therefore, does not support Petitioners' claims that Verizon Wireless violated the

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[73] *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,518, ¶ 162 ("We decline to place any conditions on the sale of the Divestiture Assets based on (1) the size, ownership structure, or business plan of the acquirer, or (2) the size of the geographic areas that the Divestiture Areas can be sold to an acquirer."). NTELOS repeats the arguments that Metro PCS and it made in the *Verizon/ALLTEL* docket that Verizon Wireless should divest these assets to rural and regional mid-tier carriers. NTELOS Petition at 3-4. NTELOS, however, offers nothing new to justify the Commission's reversing course on this issue. Its claim also is precluded by Section 310(d).

[74] CAPCC Petition at 9.

[75] NABOB Petition at 8.

[76] *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,518, ¶ 162 (emphasis added).

merger requirements. In any event, as discussed below, Verizon Wireless conducted the process in a manner consistent with the FCC's encouragement.

3. Verizon Wireless Conducted an Open and Inclusive Sale Process That Gave Opportunities to Minority and Socially Disadvantaged Firms

Petitioners' claims are wholly inaccurate as Verizon Wireless conducted an open bidding process, specifically involved and encouraged minority and socially disadvantaged businesses in that process, and made efforts to include such entities at each stage, just as the Commission suggested it to do in the *Verizon/ALLTEL Order*.[77] For example, early in the process, Verizon Wireless asked the Minority Media Telecommunications Council ("MMTC") to identify minority-owned businesses that would be in a position to participate in the divestiture sale process. Subsequently, MMTC identified and submitted the names of two minority-owned entities, both of which initially participated in the sale process, but only one of which submitted a bid.

Even before the *Verizon/ALLTEL Order* was adopted, Verizon Wireless received a number of inquiries regarding the anticipated divestiture properties due to press reports regarding Verizon Wireless's voluntary commitment to divest these properties. Verizon Wireless and Morgan Stanley & Co. Incorporated ("Morgan Stanley"), which Verizon Wireless had hired in March 2007 as its financial advisor for its then-proposed acquisition of ALLTEL, began working on the sale of the divestiture properties in August 2008.[78]

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[77] Declaration of John Schreiber, Executive Director, Property Planning & Acquisition, Cellco Partnership d/b/a Verizon Wireless, attached as Exhibit A.

[78] *See* Declaration of Christopher J. Bartlett, Executive Director, Investment Banking Division, Morgan Stanley & Co. Incorporated ¶ 3 ("Bartlett Declaration"), attached as Exhibit B.

At the direction of Verizon Wireless, Morgan Stanley conducted an open and inclusive search for potential buyers of the properties to be divested. Morgan Stanley sent a Preliminary Overview of the Divestiture Assets and a non-disclosure agreement to a large variety of prospective buyers, including minority and socially disadvantaged firms.[79] Subsequently, Morgan Stanley issued a Confidential Information Memorandum, including descriptive business information and detailed financial and operating data on the required divestiture properties on a state-level basis, to over 70 individual parties that had expressed an interest in the assets.[80] A number of smaller, rural operators, state-level carriers and financial buyers, as well as four minority-owned bidder groups and one regional consortium that included a financial sponsor that typically has sought to partner with minority-owned entities and management teams, received this Confidential Information Memorandum.[81]

After reviewing the Confidential Information Memorandum, potential bidders submitted preliminary indications of interest to Morgan Stanley in mid-November 2008.[82] Morgan Stanley, at Verizon Wireless's direction, then invited over 20 parties, including four minority-owned entities and the consortium mentioned above, to participate in more-detailed due diligence conversations.[83] Three of these minority-owned entities had no previous experience in the wireless communications sector.[84] In processes of this type, the inclusion of 20 parties in a "second round" of due diligence is a substantial undertaking and, thus, the number of parties

[79] *Id.* ¶ 4.

[80] *Id.* ¶ 5.

[81] *Id.*

[82] *Id.* ¶ 7.

[83] *Id.* ¶ 8.

[84] *Id.*

invited forward typically would be much smaller. Verizon Wireless and Morgan Stanley devoted significant resources and time to prospective bidders during this stage of the process, providing more-detailed financial and business due diligence information and access to management in response to specific requests and questions.[85] Morgan Stanley also provided prospective bidders with bid procedures, a draft acquisition agreement, a draft transition services agreement, a draft roaming agreement and auditable financials.[86]

Initial bids from 28 entities, including four minority-owned entities and the consortium mentioned above, were submitted to Morgan Stanley.[87] Final bids from 14 entities, including three minority-owned entities, were submitted on or after March 30, 2009.[88] Thus, from the beginning, Verizon Wireless and Morgan Stanley ensured the bidding process for these assets was open to all interested entities, including businesses owned by minorities and socially disadvantaged groups, entrepreneurs, regional and state-level wireless carriers, large wireless carriers, small telecommunications operators, financial buyers and industry veterans.

Moreover, while the process was open to all, Verizon Wireless and Morgan Stanley took additional steps to encourage participation by minority and socially disadvantaged groups at every stage of the process, including, in some instances, undertaking actions or giving

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[85] *Id.*

[86] *Id.* ¶ 11.

[87] *Id.* ¶ 13. NABOB's claims that dates for the submission of bids changed without warning and that minority bidders were not given information explaining these changes are wholly inaccurate. NABOB Petition at 7. To the contrary, Morgan Stanley sent a letter to all prospective bidders in this stage of the process, including minority-owned entities, on January 29, 2009 indicating that the final bid date was being pushed back to March 30, 2009 to account for the fact that work being done on the audited financial statements was taking longer than initially had been communicated. Bartlett Declaration ¶ 12.

[88] Bartlett Declaration ¶ 13.

considerations not provided to other bidders, like relaxing the bid timelines or other procedural requirements. For example, during the initial stage of the bidding process, Morgan Stanley and a senior executive from Verizon participated in only two in-person meetings with bidders — one minority-owned bidder and the consortium mentioned above.[89] Another minority-owned bidder was provided access to the Confidential Information Memorandum without signing a non-disclosure agreement so as to expedite its due diligence.[90] A minority-owned bidder also was provided access to the data site prior to submitting an initial indication of interest.[91] Morgan Stanley and Verizon Wireless also provided any disclosable due diligence information requested by minority-owned bidding entities participating in the second stage of the process.[92] In addition, Morgan Stanley, at Verizon Wireless's direction, proactively reached out to one minority-owned bidder, which previously had elected not to remain in the process and proceed into the second round, to encourage it to reconsider its decision. Morgan Stanley and senior Verizon staff also met with this bidder and provided detailed guidance as to the geographic areas in which it could be competitive in the sale process.[93]

The fact that a minority or socially disadvantaged business ultimately was not selected as the purchaser for these assets does not negate the open and inclusive process that was used to conduct the divestiture sale. To the contrary, a number of government-imposed constraints were placed on this process that inhibited the likelihood of success of a minority-owned business or

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[89] *Id.* ¶ 5.

[90] *Id.* ¶ 6.

[91] *Id.* ¶ 8.

[92] *Id.* ¶ 9.

[93] *Id.* ¶ 10.

socially disadvantaged entity. For example, the FCC and DOJ required Verizon Wireless to dispose of these assets rapidly and by a firm deadline in one of the most adverse economic climates in decades.[94] Verizon Wireless thus needed a high degree of confidence that a buyer would be deemed acceptable to both the FCC and the DOJ, and furthermore needed certainty that the divestitures would be consummated should the necessary government approvals be obtained.

In the end, Verizon Wireless chose two entities with experience operating wireless businesses, which Verizon Wireless believed would enhance the acceptability of the buyers to the government, and with the financial resources necessary to ensure that the proposed transaction would be timely consummated, as required by the Final Judgment and Modified Final Judgments and the *Verizon/ALLTEL Order*.[95] Indeed, requiring such committed financing is customary in such circumstances, even if the sale process does not include divestitures mandated by regulatory bodies. Moreover, recent dislocations in the financial and credit markets made it especially challenging for smaller buyers to obtain equity funding and debt financing for an asset

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[94] *See Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,519, ¶ 166 (requiring the company to file applications seeking authorization to divest this spectrum within 120 days with the possibility of getting a 60-day extension (or a maximum of 180 days)); *United States* v. *Verizon Commc'ns Inc.*, Civil No. 08-1878, Final Judgment, at 9 (D.D.C. filed Apr. 24, 2009) ("*Final Judgment*") (requiring the company to file applications seeking authorization to divest this spectrum within 120 days with the possibility of one or more extensions not to exceed 60 calendar days in total (or a maximum of 180 days) and to divest this spectrum within five days after such approval is received); *United States* v. *Bell Atl. Corp.*, Civil No. 99-01119, Modified Final Judgment, at 34-35 (D.D.C. filed Dec. 30, 2008); *United States* v. *ALLTEL Corp.*, Civil No. 06-03631, Modified Final Judgment, at 27 (D. Minn. filed Oct. 31, 2008).

[95] CAPCC asserts in its petition that Verizon Wireless could have found a socially disadvantaged business to buy the assets it is selling to Atlantic Tele-Network, Inc. ("ATNI") at the same price. CAPCC Petition at 6. However, price per POP is not the sole factor that Verizon Wireless considered in selecting buyers. As part of its proposal, ATNI demonstrated that it had sufficient financial resources, between cash on hand and borrowing capacity under its existing credit facility that assured Verizon Wireless of its ability to see this transaction through. In any event, whether a socially disadvantaged business could have matched the price ATNI is paying is not relevant to this transaction, which involves the divestiture of other properties.

purchase of this size and scale.[96] In addition, the DOJ required the clustering of divestiture assets into groups of CMAs to ensure that, post-closing, the assets could be operated as a viable, stand-alone business.[97] This clustering mandate increased the scale and cost of the asset groupings, making acquisition even less feasible for potential buyers without substantial financial resources. Finally, a number of smaller, non-operator bidders requested multi-year commercial and operating relationships with Verizon in connection with the transition.[98] This, however, was contrary to DOJ's general position regarding transition services and the buyer quickly achieving independent operations that could have jeopardized approval of a sale.[99]

B. The Commission Should Not Consider Claims That Are Not Transaction-Specific

Certain parties opposing the transaction or seeking conditions have ignored the Commission's longstanding policy of "not consider[ing] arguments in [transaction]

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[96] Bartlett Declaration ¶ 15 (noting that a number of the bids submitted by smaller, non-operator bidders, including minority-owned bidders, lacked funding commitments or were based on financing that was not committed by a lending institution or otherwise not guaranteed).

[97] *Final Judgment* at 12-16.

[98] Bartlett Declaration ¶ 14. Verizon Wireless also was compelled to consider a myriad of factors in its decisions regarding the divestiture sales, including but not limited to (i) the challenging schedule that was mandated by orders of the Federal Court and FCC to complete an enormous sale of 105 wireless markets scattered across 22 states, (ii) realizing the best value possible under severely depressed market conditions, (iii) the immense complexities and risks associated with negotiating and closing multiple transactions, (iv) extremely onerous logistics and substantial expense-related risks associated with maintaining the large back office infrastructure and supporting transition services for multiple buyers, (v) the uncertainties of the regulatory approval processes, and (vi) the consequences of failing to comply with the FCC's *Verizon/ALLTEL Order* or the Final Judgment and Modified Final Judgments.

[99] *Final Judgment* at 16 ("At the option of the Acquirer(s) of the Divestiture Assets, defendants shall enter into a contract for transition services customarily provided in connection with the sale of a business providing mobile wireless telecommunications services or intellectual property licensing sufficient to meet all or part of the needs of the Acquirer(s) *for a period of up to one year*") (emphasis added).

proceeding[s] that are better addressed in other Commission proceedings"[100] and of not "impos[ing] conditions to remedy pre-existing harms or harms that are unrelated to the transaction."[101] Cellular South and RTG, for instance, have raised issues related to expanded automatic roaming requirements and restrictions on exclusive handsets[102] that "apply broadly across the industry" and are not "issue[s] specific to this transaction."[103] They have demanded imposing on Applicants[104] alone (but not the industry generally) burdensome regulatory requirements, all in the context of a transaction that involves a small fraction of the country's wireless subscribers, fulfills government-imposed divestiture requirements and has numerous undisputed public interest benefits. Applicants already have responded (and will continue to

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[100] *McCaw/AT&T Order*, 9 FCC Rcd. at 5904, ¶ 123.

[101] *See, e.g.*, *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,463, ¶ 29; *Sprint/Clearwire Order*, 23 FCC Rcd. at 17,582, ¶ 22; *AT&T/BellSouth Order*, 22 FCC Rcd. at 5674-75, ¶ 22; *SBC/AT&T Order*, 20 FCC Rcd. at 18,303, ¶ 19; *Sprint/Nextel Order*, 20 FCC Rcd. at 13,979, ¶ 23; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21,545-46, ¶ 43.

[102] *See, e.g.*, Cellular South Petition at 11-15 (seeking condition prohibiting AT&T from entering into or enforcing handset exclusivity arrangements); RTG Petition at 11-14 (proposing conditions to prohibit AT&T and Verizon from entering into or enforcing handset exclusivity agreements and requiring Applicants to provide both automatic voice and data roaming to all requesting parties in all markets where Applicants provide service, even if the requesting party holds spectrum in that market). Cellular South's announcement — one day after filing its Petition to Deny — that it plans to add an Android smartphone to its lineup of smartphones and touch-screen devices this year belies its claims here that small and regional wireless carriers cannot obtain popular handsets to compete with national carriers. *Compare* Press Release, Cellular South, Cellular South to Offer Android Smartphone This Year (July 21, 2009), *available at* https://www.cellularsouth.com/news/2009/20090721.html, *with* Cellular South Petition to Deny at 11-15.

[103] *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,536, ¶ 207.

[104] This proposal is illogical, if not completely unprecedented, as Petitioners ask the Commission to impose conditions on the selling party when divesting properties inherently poses no threat to competition.

participate) in the appropriate proceedings to the claims that opponents improperly raise here.[105] In those proceedings, Applicants have explained why the regulatory changes certain opponents seek here are both unnecessary and harmful to consumers.

Moreover, imposing any of these proposed regulatory changes on Applicants alone under the guise of a unilateral transaction condition, but not on the industry as a whole, would harm the public interest by constraining Applicants' ability to compete, discouraging them from investing and disadvantaging consumers. These constraints would be contrary to the purpose of the divestiture requirement to preserve competition that the Commission and DOJ were concerned might have been lost as a result of Verizon's purchase of ALLTEL. The Commission should summarily dismiss these claims in this proceeding and consider them, if at all, in industrywide proceedings where it "will be able to develop a comprehensive approach based on a full record."[106]

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[105] *See, e.g.*, *In re Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers & Handset Mfrs.*, RM-11497, Reply Comments of AT&T Inc. (filed Feb. 20, 2009), Comments of AT&T Inc. (filed Feb. 2, 2009), Comments of Verizon Wireless (filed Feb. 2, 2009); *In re Wireless Telecomms. Bureau Seeks Comment on Commercial Mobile Servs. Mkt. Competition*, WT Dkt No. 09-66, Reply Comments of AT&T Inc. at 32-42 (filed July 13, 2009), Comments of AT&T Inc. at 35-36 (filed June 15, 2009), Comments of Verizon Wireless at 14-18 (filed June 15, 2009); *In re Reexamination of Roaming Obligations of Commercial Mobile Radio Serv. Providers*, WT Dkt No. 05-265, Reply Comments of AT&T Inc. (filed Nov. 28, 2007), Reply Comments of Verizon Wireless (filed Nov. 28, 2007), Opposition to Petition for Reconsideration of AT&T Inc. (filed Nov. 6, 2007), Opposition of Verizon Wireless (filed Nov. 6, 2007), Comments of AT&T Inc. (filed Oct. 29, 2007), Comments of Verizon Wireless (filed Oct. 29, 2007).

[106] *SBC/AT&T Order*, 20 FCC Rcd. at 18,320, ¶ 55; *see also Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21,592, ¶ 183. To the extent the Commission determines, despite clear precedent to the contrary, to consider these issues in this proceeding, the Commission should quickly dismiss these issues as meritless. Pleadings filed by AT&T and Verizon Wireless in the relevant rulemaking proceedings, which Applicants hereby request to incorporate in this proceeding by reference, clearly demonstrate why the requested changes are contrary to the public interest.

Other transaction opponents rehash arguments that have been addressed by the Commission previously or are pending before the Commission in another proceeding, where the Commission will have the opportunity to address them.[107] The opponents should not be permitted to burden this proceeding with these unrelated issues, and the Commission should promptly dismiss them here.

C. The Transaction Does Not Raise Trafficking Issues

Nothing in the Communications Act, the Commission's rules or any precedent supports Cellular South's claim that these applications "*must* be reviewed for trafficking" and that "VZW *must* be required to disclose in accordance with § 1.948(i)(2) of the Rules whether" it is

[107] For example, CAPCC argues in this proceeding that the Commission erred in previously approving Verizon Wireless's foreign ownership showing. *See* CAPCC Petition at 12-29. The Commission, however, already has ruled on this issue. *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,541, ¶ 221 (rejecting CAPCC's petition to deny on the grounds of Verizon's foreign ownership); *recons. pending*, WT Dkt No. 08-95, Petition for Reconsideration of Chatham Avalon Park Community Council at 7-23 (filed Dec. 10, 2008) (challenging FCC's approval of Verizon's foreign ownership showing). The Commission once again should reject CAPCC's request that consent to transfer of the divestiture assets be denied because Verizon Wireless's foreign ownership showing is inadequate. CAPCC Petition at 12-29. The Commission repeatedly has approved Verizon Wireless's foreign ownership showing and expressly rejected CAPCC's claims. Specifically, in the *Verizon/ALLTEL Order*, the Commission concluded that "Chatham misconstrues the methodology that Verizon Wireless has used to demonstrate compliance with its section 310(b)(4) ruling" and that "there is no substantial or material question of fact as to whether Verizon Wireless's foreign ownership complies with the limitations of the *Vodafone-Bell Atlantic Order*." *Verizon /ALLTEL Order*, 23 FCC Rcd. at 17,544-45, ¶¶ 228-229 & n.793 (citing several instances in which it had approved foreign ownership showings based on the same compliance methodology used by Verizon Wireless). CAPCC offers no new fact or argument that justifies revisiting the Commission's conclusive resolution of this issue. In addition, NTELOS argues that the Commission should resolve petitions for reconsideration and clarification of the *Verizon/ALLTEL Order*. NTELOS Petition at 6. Likewise, Cellular South reasserts arguments that the Commission rejected in the *Verizon/ALLTEL Order*. Cellular South Petition at 7-11. The arguments raised in those petitions are completely unfounded. In any event, there is no reason to delay the intensification of competition and other public interest benefits this transaction will bring until they are resolved. Finally, as stated above, these arguments amount to an improper collateral attack on the *Verizon/ALLTEL Order*. *See supra* note 39.

"resell[ing] the authorizations it acquired from ALLTEL at a profit."[108] "Commission review for the purposes of determining whether trafficking has occurred is *discretionary*."[109] The Commission has no reason to exercise this discretion here. Verizon Wireless did not acquire these authorizations "for the principal purpose of speculation or profitable resale."[110] Rather, it sought to acquire an entire company and had no choice but to acquire these authorizations in the process. Absent compulsion by the FCC and DOJ, Verizon Wireless would not be seeking to sell the assets in question. Moreover, the anti-trafficking rules are not aimed at subsequent sales of *constructed* facilities *acquired at a market price*[111] as is the case here.[112] Consistent with the fact that these divestitures were mandated by the FCC and DOJ as a condition to their approvals

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[108] Cellular South Petition at 11 (emphasis added).

[109] *Verizon Wireless/ALLTEL*, 23 FCC Rcd. at 17,536, ¶ 209 (emphasis added).

[110] 47 C.F.R. § 1.948(i)(1) (defining trafficking).

[111] *See In re Year 2000 Biennial Regulatory Review — Amendment of Part 22 of the Comm'n's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Serv. & Other Commercial Mobile Radio Servs.*, Report and Order, 17 FCC Rcd 18,401, 18,437, ¶ 72 (2002) (stating that the anti-trafficking rules seek "to deter insincere applicants from speculating on *unbuilt* facilities.") (emphasis added); *cf. In re Forbearance from Applying Provisions of the Commc'ns Act to Wireless Telecomms. Carriers*, First Report and Order, 15 FCC Rcd. 17,414, 17,429, ¶ 33 (2000) ("[R]equiring initial licensees to pay market value for their authorizations[] effectively safeguards against such speculation.").

[112] All of the former ALLTEL licenses have been constructed except for several common carrier, fixed point-to-point microwave licenses. As Applicants previously noted, Public Interest Statement at 37 & n.97, the Commission's rules permit transfers of unconstructed microwave facilities that, as here, are "incidental to a sale of other facilities or merger of interests." 47 C.F.R. § 101.55(c)-(d). In addition, the transaction includes the partial assignment of three broadband PCS licenses (WQCS432, WQCS434 and WQCS443) and one AWS license (WQGA717) for which construction notifications have not been filed yet. Verizon Wireless or one of its subsidiaries acquired all four of these licenses at auction in the last five years, and no party has raised any trafficking concerns about them.

of Verizon Wireless's acquisition of ALLTEL, the Commission should reject Cellular South's argument that Verizon Wireless's sale of the divestiture assets constitutes license trafficking.[113]

[113] Cellular South's related argument that the Commission did not properly approve the transfer of *de facto* control of this spectrum to the Management Trustee, Cellular South Petition at 7-9, is both wrong, *see, e.g.*, File No. 0003685740, and irrelevant to whether it is in the public interest for AT&T to acquire control of the spectrum.

VI. Conclusion

For the foregoing reasons, the Commission should dismiss or deny the filings made in opposition to these applications. Applicants have demonstrated that the proposed transaction serves the public interest, convenience and necessity. Accordingly, the Commission should expeditiously grant, without conditions, the applications to transfer control or assign certain wireless licenses and authorizations from Verizon Wireless to AT&T.

Respectfully submitted,

AT&T Inc.

By: /s/ William R. Drexel
William R. Drexel
John J. O'Connor
G. Troy Hatch
Elefteris Velesiotis
AT&T Inc.
1010 N. St. Mary's Street
Room 1410
San Antonio, TX 78215
Telephone: (210) 351-5360

Gary L. Phillips
Michael P. Goggin
AT&T Inc.
1120 Twentieth Street, NW, Ste. 1000
Washington, D.C. 20036
Telephone: (202) 457-3055

Verizon Wireless

By: /s/ John T. Scott, III
John T. Scott, III
Michael Samsock
Verizon Wireless
1300 Eye Street, NW
Suite 400 West
Washington, D.C. 20005
Telephone: (202) 589-3740

Of Counsel:

Arnold & Porter LLP
555 Twelfth Street, NW
Washington, D.C. 20004
Telephone: (202) 942-6060

Nancy J. Victory
Catherine M. Hilke
Wiley Rein LLP
1776 K Street, NW
Washington, D.C. 20006
(202) 719-7000

CERTIFICATE OF SERVICE

I hereby certify that on this thirtieth day of July, 2009, I caused true and correct copies of the foregoing Joint Opposition of AT&T Inc. and Verizon Wireless to Petitions to Deny or to Condition Consent and Reply to Comments to be served by electronic mail, first-class mail, postage prepaid, or hand delivery upon:

Best Copy and Printing, Inc.
445 Twelfth Street, SW
Room CY-B402
Washington, D.C. 20554

Jim Bird
Office of General Counsel
Federal Communications Commission
445 Twelfth Street, SW
Room 8-C824
Washington, D.C. 20554

Erin McGrath
Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, SW
Room 6338
Washington, D.C. 20554

Neil Dellar
Office of General Counsel
Federal Communications Commission
445 Twelfth Street, SW
Room 8-C818
Washington, D.C. 20554

Stacy Ferraro
Spectrum and Competition Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, SW
Room 6528
Washington, D.C. 20554

Russell D. Lukas
David L. Nace
Lukas, Nace, Gutierrez & Sachs, LLP
1650 Tysons Blvd., Ste. 1500
McLean, VA 22102

Linda Ray
Broadband Division
Federal Communications Commission
Wireless Telecommunications Bureau
445 Twelfth Street, SW
Room 3-A-160
Washington, D.C. 20554

Mary McDermott
Senior Vice President-Legal and
Regulatory Affairs
NTELOS
401 Spring Lane, Ste. 300
Waynesboro, VA 22980

David Krech
Policy Division
International Bureau
Federal Communications Commission
445 Twelfth Street, SW
Room 7-A664
Washington, D.C. 20554

James L. Winston
Executive Director and General Counsel
National Association of Black Owned
Broadcasters, Inc.
1155 Connecticut Avenue, NW, Ste. 600
Washington, D.C. 20036

Chatham Avalon Park Community Council
8441 South Cottage Grove
Chicago, IL 60619

Aaron Shainis
Shainis & Peltzman, Chartered
1850 M Street, NW
Washington, D.C. 20036

Charles W. McKee
Vice President, Government Affairs
Federal & State Regulatory
Maria L. Cattafesta
Senior Counsel, Government Affairs
Sprint Nextel Corporation
2001 Edmund Halley Drive
Reston, VA 20191

Caressa D. Bennet
Daryl A. Zakov
Bennet & Bennet, PLLC
4350 East-West Highway, Ste. 201
Bethesda, MD 20814

/s/ William R. Zema, Jr.

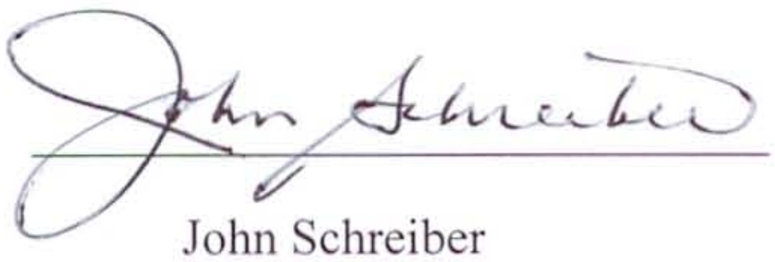
William R. Zema, Jr.

EXHIBIT A

DECLARATION OF JOHN SCHREIBER,
EXECUTIVE DIRECTOR, PROPERTY PLANNING & ACQUISITION,
CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS

I, John Schreiber, am the Executive Director of Property Planning & Acquisition for Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless"). In this role, I am responsible for the divestitures required under the FCC's *Verizon/ALLTEL Order*, the Final Judgment entered in *United States, et al. v. Verizon Comm'ns Inc. & Alltel Corp.*, the Modified Final Judgment entered in *United States v. Bell Atlantic Corp., GTE Corp. and Vodafone AirTouch PLC*, and the Modified Final Judgment entered by the Court in *United States & State of Minn. V. Alltel Corp. & Midwest Wireless Holdings LLC.* I hereby declare under penalty of perjury that the facts contained in Section V.A. of the Joint Opposition of Verizon Wireless and AT&T Inc. that pertain to the sale process undertaken by Verizon Wireless to accomplish the required divestitures, apart from those facts that are attested to by Christopher J. Bartlett of Morgan Stanley & Co. Incorporated, are true and correct to the best of my knowledge.

Executed on this 30th day of July, 2009.



John Schreiber

EXHIBIT B

DECLARATION OF CHRISTOPHER J. BARTLETT, EXECUTIVE DIRECTOR, INVESTMENT BANKING DIVISION, MORGAN STANLEY & CO. INCORPORATED

Christopher J. Bartlett hereby submits this declaration to the Federal Communications Commission (the "Commission"), pursuant to Section 1.16 of the Commission's rules, 47 C.F.R. § 1.16, in connection with the Joint Opposition of Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") and AT&T Inc. ("AT&T").

1. I am an Executive Director in the Investment Banking Division of Morgan Stanley & Co. Incorporated ("Morgan Stanley"). Morgan Stanley is a financial advisor to companies, governments, and investors around the world.

2. In March 2007, Verizon Wireless engaged Morgan Stanley as its financial advisor in connection with the proposed acquisition of Alltel Corporation. The engagement included advisory services to be provided by Morgan Stanley in connection with any divestitures resulting from the acquisition of Alltel. As an Executive Director in the Investment Banking Division of Morgan Stanley, I coordinated the day-to-day activities at Morgan Stanley related to the divestiture sale process, including interacting with prospective purchasers, coordinating responses to due diligence requests made by prospective purchasers, and providing advice to Verizon Wireless, as well as other transaction matters as directed by Verizon Wireless. I worked closely throughout the process with staff at Verizon Wireless, Alltel Corporation and others at Morgan Stanley.

3. In August 2008, Morgan Stanley and Verizon Wireless began working on the sale of the assets Verizon Wireless was required to divest pursuant to regulatory action of the FCC and U.S. Department of Justice, as reflected in the FCC's *Verizon-Alltel Order* and DOJ's Final Judgment and Modified Final Judgments.[1]

4. In August and September 2008, and at later dates as additional parties contacted Verizon Wireless and Morgan Stanley, Morgan Stanley sent a Preliminary Overview of the Divestiture Assets and a Non-Disclosure Agreement to approximately 70 prospective buyers. This group of prospective buyers included national, regional, and small wireless carriers, wireline telecommunications companies, entrepreneurs, financial buyers, industry veterans, and businesses owned by minorities and socially disadvantaged groups.

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[1] *Applications of Cellco 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, 23 FCC Rcd 17444 (2008); *United States of America et al. v. Verizon Communications Inc. and Alltel Corporation*, Civil No. 08-1878, Final Judgment, at 9 (entered Apr. 24, 2009); *United States v. Bell Atlantic Corp., GTE Corp. and Vodafone AirTouch PLC*, Civil No. 99-01119, Modified Final Judgment, at 34-35 (entered Dec. 31, 2008); *United States & State of Minn. v. Alltel Corp. & Midwest Wireless Holdings L.L.C*, Civil No. 06-03631, Modified Final Judgment, at 27 (entered Oct. 31, 2008).

5. The sale process was officially launched in October 2008. In November 2008, Morgan Stanley distributed a Confidential Information Memorandum, including descriptive business information and detailed financial and operating data on the required divestiture properties on a state-level basis, to over 70 individual parties that had expressed an interest in the assets. This included a number of smaller, rural operators, state-level carriers, and financial buyers. This also included 4 minority-owned bidder groups and a regional consortium which included a financial sponsor that typically has sought to partner with minority-owned entities and management teams. At this early stage of the sale process, only two in-person meetings with potential bidders (one minority-owned entity and the consortium mentioned above) were held by Morgan Stanley and a senior executive from Verizon .

6. As is customary in sale processes of this sort, the vast majority of potential bidders were required to sign a Non-Disclosure Agreement prior to obtaining the Confidential Information Memorandum. However, an exception was made for one minority-owned entity that was provided access to the Confidential Information Memorandum prior to signing a Non-Disclosure Agreement so as to expedite its due diligence.

7. After reviewing the Confidential Information Memorandum, potential bidders submitted preliminary indications of interest to Morgan Stanley in mid-November 2008. A small number of potential purchasers, including one minority-owned entity, were permitted to submit preliminary indications of interest later in the sale process to facilitate their inclusion in the process.

8. After reviewing the preliminary indications of interest, Morgan Stanley, at the direction of Verizon Wireless, invited over 20 parties to participate in more detailed due diligence, including, but not limited to, data room access and access to company management. Of these parties, four were minority-owned entities and one was the consortium mentioned above. Only one of these four minority-owned entities has previous experience in the wireless communications sector. Morgan Stanley, at Verizon Wireless' direction, also provided one minority-owned entity access to the online data room prior to its submission of any preliminary indication of interest in order to expedite its due diligence. Morgan Stanley and Verizon Wireless devoted significant resources and time to prospective bidders during this stage of the process, providing more detailed financial and business due diligence information and access to management in response to specific requests and questions.

9. Morgan Stanley and Verizon Wireless provided any disclosable due diligence information requested by minority-owned bidding entities participating in this stage of the process.

10. Morgan Stanley, at the direction of Verizon Wireless, proactively reached out to one minority-owned bidder, who previously elected voluntarily not to proceed during the second round of the sale process, to encourage it to reevaluate participating in the process. Morgan Stanley and senior Verizon Wireless staff also spoke with this bidder

and provided detailed geographical guidance as to where it could be competitive in the bidding process.

11. In January 2009, Morgan Stanley provided prospective bidders with bid procedures, a draft acquisition agreement, and a draft transition services agreement. In February 2009, Morgan Stanley provided them with a draft roaming agreement. In early March 2009, Morgan Stanley provided them with financial statements that were in the process of being audited by PricewaterhouseCoopers LLP ("Pricewaterhouse").

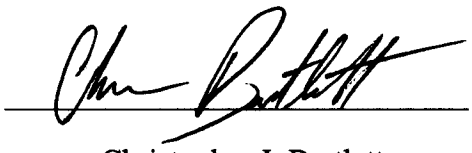
12. A letter outlining the procedures for submitting final bids was sent to prospective bidders by Morgan Stanley on January 13, 2009. The letter indicated a final bid date in mid-February 2009. It subsequently became clear that the work being done on the audited financial statements (being prepared by Pricewaterhouse) was taking longer than had initially been communicated, and as a result Morgan Stanley sent a revised letter outlining bid procedures to prospective bidders on January 29, 2009, indicating a final bid date of March 30, 2009. All minority-owned entities in this stage of the process received the revised bid procedures letter stating the bid date had been changed to March 30, 2009.

13. Initial bids from 28 entities, including 4 minority-owned entities and the consortium mentioned above, were submitted to Morgan Stanley. Final bids from 14 entities, including 3 minority-owned entities, were submitted on or after March 30, 2009.

14. As part of their bids or in discussions with prospective bidders regarding their interest, a number of smaller, non-operator bidders, including minority-owned entities, requested multi-year transition service agreements or long-term commercial and operating relationships with Verizon Wireless.

15. A number of the bids submitted by smaller, non-operator bidders, including minority-owned entities, lacked funding commitments or were based on financing that was not committed by a lending institution or otherwise not guaranteed.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 30th day of July, 2009.



Christopher J. Bartlett