Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

Applications of	)	
	)	
AT&T, INC.	)	
	)	
and	)	
	)	
CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS	)	WT Docket No. 09-104
	)	
	)	
for Consent to Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement	)	

REPLY COMMENTS OF THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

The South Dakota Public Utilities Commission ("SDPUC") submits these comments regarding the applications[1] of AT&T Inc. (AT&T") and Cellco Partnership d/b/a Verizon Wireless, ("Verizon Wireless") (together "Applicants") for approval to transfer to AT&T wireless assets in 79 Cellular Market Areas ("CMAs"). The SDPUC has a strong interest in this proposed transfer as some of the assets at issue comprise an extensive network in South Dakota that was owned and operated by ALLTEL Corporation ("ALLTEL").

STANDARD OF REVIEW AND PUBLIC INTEREST ANALYSIS

Pursuant to sections 214(a) and 310(d) of the Communications Act of 1934, as amended ("Communications Act"),[2] the Federal Communications Commission ("Commission" or "FCC") must determine whether the Applicants have demonstrated that the proposed transaction would serve the public interest, convenience, and

[1] Applications of AT&T, Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, ("Applications").
[2] 47 U.S.C. §§ 214(a), 310(d).

necessity. The Commission has found that "[t]he public interest standards of sections 214(a) and 310(d) involve a balancing process that weighs the potential public interest harms of the proposed transaction against the potential public interest benefits."[3] The Applicants "bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest."[4]

The Commission has recognized and incorporated into its public interest evaluation the broad aims of the Communications Act and has found that these aims "include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest."[5] The FCC's analysis of the public interest may also entail assessing whether the proposed sale "will affect the quality of communications services or will result in the provision of new or additional services to consumers."[6] The Commission has broad authority to impose conditions or restrictions that are designed to ensure the sale will result in public interest benefits.[7]

A number of entities have filed petitions to deny, impose conditions, or have requested additional details regarding the proposed merger. The SDPUC agrees that additional information should be provided and that conditions should be imposed or

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[3] Applications of Western Wireless Corporation and ALLTEL Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket 05-50, *Memorandum Opinion and Order,* 20 FCC Rcd 13053, 13602-03 ¶ 17 (July 19, 2005).

[4] *Id.* at 13063 ¶ 17.

[5] *Id.* at 13064 ¶ 19.

[6] *Id.* at 13064-65 ¶ 19.

[7] *Id.* at 13065-66 ¶ 21; *see also* Section 303(r) of the Communications Act which authorizes the Commission to prescribe restrictions or conditions, not inconsistent with law, that may be necessary to carry out the provisions of the Act. Similarly, section 214(c) of the Act authorizes the Commission to attach to the certificate "such terms and conditions as in its judgment the public convenience and necessity may require."

more detailed commitments should be made in order to ensure the preservation and enhancement of competition in the state of South Dakota.

ISSUES OF CONCERN

The approval of the Verizon Wireless/ALLTEL merger was conditioned on Verizon Wireless divesting 105 CMAs, 79 of which are part of this transaction. This required divestiture includes the entirety of ALLTEL's South Dakota wireless network. ALLTEL[8] and Verizon Wireless are the two major, dominant carriers in South Dakota. Verizon Wireless and ALLTEL's networks both use CDMA technology. By contrast, AT&T relies on GSM technology.

In the public interest portion of the applications, AT&T states that approval of the transaction will make AT&T's 3G UMTS technology, as well as other next-generation wireless services, available in rural areas.[9] AT&T claims that it "will be able to integrate quickly ALLTEL's GSM network with its own, and AT&T will overbuild the divested CDMA networks to GSM to enable a smooth migration of those customers to GSM."[10] AT&T notes that it has rolled out 3G services to nearly 350 major metropolitan areas and that it has multiple projects designed to enhance its 3G network.[11] AT&T then claims that it has the "motivation to roll out its 3G service to the additional affected CMAs to permit its customers with 3G handsets to obtain its broadband service over a broader geographic area."[12]

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[8] Pursuant to the Commission's order, a management trustee was appointed to serve as manager and operator of the divestiture assets until such assets are sold to third party purchasers. During this period, the management trustee is in day-to-day control of the divestiture assets. Verizon Wireless retains *de jure* control and has the sole power to market and dispose of the divestiture assets.

[9] Applications, Description of Transaction, Public Interest Showing and Related Demonstrations at 7 ("Public Interest Showing").

[10] *Id.* at 10.

[11] *Id.* at 11.

[12] *Id.*

As pointed out in Sprint Nextel Corporation's ("Sprint") comments, the Applicants' have failed to provide sufficient detail regarding AT&T's plans for the existing CDMA based network and AT&T's planned overbuild of the CDMA network to GSM.[13] This lack of detail is troubling and leaves the SDPUC with many unanswered questions concerning how current ALLTEL CDMA customers in South Dakota will be migrated to a GSM network. Although AT&T professes to have the "motivation" to bring 3G service to the "additional affected CMAs," AT&T makes no commitments as to details or timeframes. In its opposition to the Petitions to Deny or to Condition Consent, the Applicants provide no additional details, merely stating that "AT&T has considerable experience in transitioning CDMA properties into its existing network technology."[14]

The current ALLTEL CDMA network in South Dakota has been upgraded to 3G EV-DO Rev. A. Although AT&T states it has 3G services to nearly 350 major metropolitan areas, AT&T does not state how and with what technology it intends to overbuild the current CDMA technology to GSM technology in all of South Dakota's current ALLTEL towers. As the Commission is well aware, there are different types of GSM technology. Does AT&T intend to overbuild current ALLTEL towers in South Dakota to 3G High Speed Packet Access or an older, slower technology? The Applicants claim that the FCC's approval of this transaction 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."[15] The Commission should ensure that this statement proves true by requiring AT&T to, at a minimum, change the Alltel network to 3G HSPA.

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[13] Comments of Sprint Nextel Corporation at 8-10 ("Sprint's Comments").
[14] Joint Opposition of AT&T Inc. and Verizon Wireless to Petitions to Deny or to Condition Consent and Reply to Comments, WT Docket No. 09-104, at 12, filed July 30, 2009 ("Applicants' Joint Opposition").
[15] *Id.* at 3.

The SDPUC is also concerned about future upgrades and extending coverage beyond that provided by the current ALLTEL network. What commitments will AT&T make for future upgrades such as 3.5G and 4G LTE? As a rural, sparsely populated state, South Dakota lacks the type of population centers that AT&T appears to rely upon when rolling out advanced technology. In other words, the SDPUC is concerned that AT&T's motivation to bring advanced services to South Dakota may prove insufficient to overcome economic considerations when it decides when, or if, to provide more advanced wireless broadband access to South Dakota's rural consumers. As a very large nationwide carrier, AT&T will have many more profitable (i.e., densely populated) markets in which to invest. In addition, although ALLTEL has continued to add new towers in South Dakota, there are still areas with inadequate or nonexistent coverage. ALLTEL received and relied upon universal service funding to assist in providing coverage to the rural areas of South Dakota. Will AT&T seek universal service funding? With or without such funding, will AT&T commit its resources to building out to these unserved or underserved areas? The SDPUC urges the Commission to seek commitments or place conditions on the transaction that set forth timelines and the use of advanced technologies in order to ensure that, as promised by the Applicants, the result of the sale "will be improved network coverage for customers of both the divested systems and AT&T."[16]

A related issue regards customer policies that will be implemented by AT&T if the sale is approved. AT&T gives no details on these policies, merely stating that policies will be "in place" regarding the transitioning of customers.[17] The lack of detail leaves current ALLTEL customers, and the SDPUC, with many questions about their future wireless service. The switch from a CDMA network to a GSM network will require current

[16] *See* Public Interest Showing at 10.
[17] *Id.* at 12.

ALLTEL customers to buy new GSM phones. Many current ALLTEL customers have purchased reduced price phones by entering into one or two year contracts. Will new GSM handsets be provided to current customers free of charge or on a subsidized basis? If a customer does not wish to buy a new phone or have AT&T as its carrier, will that customer be forced to pay a penalty if the customer is under contract with ALLTEL? The Commission should require AT&T to clearly set forth its policies regarding these issues. New GSM handsets should be provided on a free or significantly reduced basis in order to avoid penalizing existing customers. In addition, there should be no early termination fees for existing ALLTEL customers who decide that they do not want to become an AT&T customer.

The SDPUC also has concerns regarding the discontinuance of the existing CDMA network. It is the SDPUC's understanding that Verizon Wireless, which uses CDMA technology, currently roams off the ALLTEL network in South Dakota. This roaming allows wireless customers in South Dakota to receive better coverage. Without the ability to roam off existing ALLTEL towers, Verizon Wireless' customers in South Dakota will experience reduced levels of wireless coverage. Adequate levels of wireless coverage are crucial in any area for a wide array of safety and economic reasons, and are especially important for rural areas. Further, the discontinuance of ALLTEL's CDMA network will leave Verizon Wireless with the only CDMA network in South Dakota. This will give Verizon Wireless a competitive advantage in South Dakota when negotiating roaming contracts with other CDMA carriers.

The SDPUC urges the Commission to carefully consider the effects of this proposed sale on South Dakota consumers. As competitors, ALLTEL and Verizon Wireless have invested in and built towers throughout South Dakota. The SDPUC has worked with both companies in order to address consumer concerns and improve

coverage throughout the state. The SDPUC hopes that, if the proposed transaction is approved, it will be structured in such a way that AT&T will be required to fulfill its commitment to expand network coverage and improve 3G services in the rural areas.

CONCLUSION

The SDPUC appreciates the opportunity to submit comments in this proceeding. In its evaluation of the public interest, we respectfully request that the Commission take our concerns into consideration.

Respectfully submitted,

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August 6, 2009

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 6th day of August, 2009, a copy of the Reply Comments of the South Dakota Public Utilities Commission was served via electronic mail or by U.S. Mail, postage prepaid, as indicated below, to the following:

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