

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

In the Matter of)	
)	
Applications of AT&T INC. and CELLCO)	WT Docket No. 09-104
PARTNERSHIP D/B/A VERIZON)	
WIRELESS)	DA 09-1350
)	
For Consent to Assign or Transfer Control)	File Nos. 0003840313, <i>et al.</i>
of Licenses and Authorizations and to)	
Modify a Spectrum Leasing Arrangement)	

**REPLY COMMENTS OF
COX COMMUNICATIONS**

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Dated: August 6, 2009

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Pursuant to the Federal Communications Commission’s (“FCC”) June 19, 2009 Public Notice,^{1/} Cox Communications (“Cox”), by and through its counsel, files these reply comments in support of the adoption of conditions that will help ensure reasonable access to a Code Division Multiple Access (“CDMA”) network for roaming purposes in those Cellular Market Areas (“CMAs”) listed in Exhibit A hereto.

AT&T has made clear that it has no intention of maintaining ALLTEL’s CDMA network following divestiture.^{2/} As a result, the choice of potential CDMA roaming partners will be reduced from two to one in a substantial number of areas and, according to information submitted in the record, all CDMA services will be eliminated in some areas. These consequences would be a direct result of AT&T’s acquisition of the ALLTEL cellular systems and its refusal to maintain a CDMA network. This

^{1/} *AT&T Inc. and Cellco Partnership D/B/A Verizon Wireless Seek FCC Consent To Assign or Transfer Control of Licenses and Authorizations and Modify A Spectrum Leasing Arrangement*, WT Docket No. 09-104, Public Notice, DA 09-1350 (rel. June 19, 2009) (“*Public Notice*”).

^{2/} Joint Opposition of AT&T Inc. and Verizon Wireless to Petitions to Deny or To Condition Consent and Reply to Comments, at 10-18 (July 30, 2009) (“*AT&T Opposition*”).

transaction-specific competitive harm can and should be avoided through the adoption of appropriately tailored conditions.

Cox therefore proposes that, in any area within the divested CMAs that would result in no CDMA air interface availability, AT&T be required to continue to maintain and operate the divested CDMA network for a period of five years from the close of this transaction, or until a next-generation LTE network has been deployed in the area, whichever occurs first. In areas where Verizon Wireless would be the sole CDMA roaming option, Cox proposes that Verizon Wireless be required to offer roaming partners the ability to opt into any existing Verizon Wireless or ALLTEL roaming agreement for a period of three years following the close of transaction.

I. COX'S INTEREST IN THIS PROCEEDING

In order to eliminate the potential competitive harm from Verizon Wireless's acquisition of ALLTEL in those CMAs where the two companies overlapped, the FCC directed Verizon Wireless to divest ALLTEL's assets in 105 CMAs. In the instant transaction, Verizon Wireless proposes to divest 79 of those CMAs to AT&T. The FCC must determine whether this particular divestiture is in the public interest.^{3/} This requires an assessment of the transaction's effect on roaming.^{4/}

Cox has commenced construction of a network to provide wireless services on the spectrum that it has acquired in either the 700 MHz or AWS band. Cox's network

^{3/} 47 U.S.C. §§ 214(a), 310(d).

^{4/} See *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent To Transfer Control of Licenses and Authorizations, File Nos. 001656065, et al.*, WT Docket 04-70, Memorandum Opinion & Order, 19 FCC Rcd 21522, ¶ 172 (2004) ("*Cingular/AT&T Merger Order*"). As the Commission has explained, its concern is that a reduction in roaming options may result in increased roaming costs that are then passed on to consumers. *Id.*

will utilize the CDMA air interface. In order to compete effectively – as a wireless provider and as a provider of the “quadruple play” (voice/video/broadband/wireless) in competition with Verizon and AT&T – Cox will need to enter into roaming agreements with CDMA carriers in markets outside of its wireless footprint.

Cox therefore has a keen interest in this proceeding. As Sprint has explained, and Cox confirms, in a substantial number of markets, the sale of ALLTEL’s cellular systems to AT&T will result in the elimination of one of only two CDMA networks – leaving Cox and other wireless carriers with no roaming alternative but Verizon Wireless. In other CMAs, according to Sprint, the result of the sale will be the elimination of any CDMA network.

As Sprint notes, a transaction may adversely affect roaming service availability if it reduces the number of technologically compatible roaming partners operating in a given area or increases roaming rates by eliminating competitive alternatives, thereby reducing a potential roaming partner’s negotiating leverage.^{5/} If AT&T is allowed to eliminate ALLTEL’s CDMA service, one or both of those outcomes is likely.

II. AT&T HAS FAILED TO ADDRESS CONCERNS REGARDING LOSS OF CDMA ROAMING OPTIONS

Sprint’s comments in this proceeding have identified substantial competitive concerns that would occur if AT&T were permitted to shut down ALLTEL’s CDMA network. The source of these concerns is straightforward: If AT&T shuts down ALLTEL’s CDMA network, the result of the merger and this divestiture will be, at a

^{5/} Sprint Comments at 5-6, n.12 & 13. The ability of a dominant carrier to extract unfavorable terms in contract negotiations is well recognized in the 1996 Telecommunications Act. *See* 47 U.S.C. § 251(c)(1) (imposing a duty of good faith negotiations on incumbent local exchange carriers).

minimum, to reduce by one the number of potential roaming partners for other CDMA carriers.^{6/} In some markets, as Sprint notes, there will be no CDMA coverage at all. AT&T's GSM network is not compatible with CDMA and thus not available for roaming by CDMA customers. Even in markets where there is a remaining CDMA provider, that provider will be Verizon Wireless, which may present challenges to providers seeking to negotiate reasonable roaming rates.^{7/}

As Sprint notes, AT&T's refusal to continue the CDMA network would result in no CDMA coverage at all in 32% of the total square mileage that ALLTEL originally covered within the 79 CMAs being divested to AT&T.^{8/} Verizon would be the sole CDMA roaming partner in 59% of the total square mileage that ALLTEL originally covered within the 79 CMAs. A transaction that results in the elimination of all competitive alternatives cannot possibly meet a public interest test designed to ensure the preservation and enhancement of competition.^{9/}

Sprint also convincingly argues that there is little possibility of any near term replacement of the lost CDMA capability by other carriers given the rural nature of many of the affected areas. For one, Sprint notes that when ALLTEL (or carriers it has

^{6/} Petition to Deny of Rural Telecommunications Group, Inc. at 7 (July 20, 2009) (noting that in states such as Montana, North and South Dakota, and Wyoming, there are three or fewer CMRS competitors -- two of which are AT&T and Verizon, and in many census blocks there will only be AT&T and Verizon.).

^{7/} For example, Verizon may have significant economic incentive (even with respect to voice roaming, notwithstanding the applicability of sections 201 and 202) to engage in protracted negotiations over a roaming agreement with Cox or increase Cox's costs by imposing excessive roaming fees.

^{8/} Sprint Comments at 10-11.

^{9/} *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*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, ¶ 27 (2008) ("*Verizon/ALLTEL Merger Order*").

acquired) built out these areas, it had the advantage of substantial subsidies from the Universal Service program.^{10/} These subsidies are unlikely to be available going forward, given the current policies of restraining high cost support.^{11/} As a result, it may not be economically viable to replace ALLTEL's CDMA network in many of the divested rural CMAs, at least in the near term.

AT&T's opposition does not address these concerns in any meaningful way. Although it claims that there will be other CDMA roaming opportunities in the affected CMAs, AT&T proffers no evidence sufficient to substantiate the claim. AT&T states that 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."^{12/} The information provided by AT&T is insufficiently granular to assess the degree to which those holding spectrum rights have or plan to deploy CDMA-compatible networks in the CMAs, however, or to determine the actual scope of coverage of those that have currently deployed CDMA networks. This information is critically important given Sprint's legitimate concerns regarding the pace of possible build-out in these largely rural areas.

AT&T's response is therefore insufficient to address Sprint's specific claims that there are substantial areas with either no coverage or only Verizon Wireless as a potential CDMA roaming partner. At a minimum, the facts alleged by Sprint create a material

^{10/} Sprint Comments at 13-15 (estimating that ALLTEL and the rural wireless carriers it has acquired received over \$1.4 billion in Universal Service high cost support).

^{11/} *Id.* at 15-16.

^{12/} *AT&T Opposition*, at 13 (citing Appendix B to the Public Interest Statement and the CDMA Development Group website).

question of fact regarding the extent of CDMA roaming options in the divested areas, precluding a public interest finding on this record.

III. COX'S INFORMATION CONFIRMS SPRINT'S CLAIMS

Cox's own analysis of wireless licenses confirms Sprint's information that substantial parts of the divested CMAs will have little or no CDMA roaming alternative besides Verizon. Exhibit A to Sprint's comments identified areas in Montana, Wyoming, western parts of North and South Dakota, Nevada, and eastern California as having either no CDMA coverage or coverage provided solely by Verizon Wireless. Cox, too, has assessed the availability of CDMA roaming in the divested CMAs and similarly found that Verizon Wireless provides the only CDMA roaming option currently available in a number of areas within these CMAs. The specific CMAs of concern identified by Cox are listed in Exhibit A attached hereto.

With respect to the CMAs identified in Exhibit A, Cox proposes the following. For any area within these CMAs where AT&T's refusal to continue to operate a CDMA network would result in no CDMA availability at all, Cox proposes that the FCC condition this transaction on AT&T's continuation of a CDMA network for a period of five years from the close of this transaction, or until a next-generation LTE network has been deployed in the area, whichever occurs first. In areas where Verizon Wireless would be the sole CDMA roaming option because AT&T refuses to maintain and operate a competing CDMA network, Cox proposes that Verizon Wireless be required to offer roaming partners that do not have existing ALLTEL or Verizon Wireless roaming agreements the ability to adopt any existing Verizon Wireless or ALLTEL roaming

agreement. Cox proposes that this opt in condition remain effective for a period of three years following the close of the transaction.

These conditions are necessary to preserve reasonable opportunities to enter into automatic roaming agreements, which the FCC has found “benefits mobile telephony subscribers by promoting seamless CMRS services around the country, and reducing inconsistent coverage and service qualities.”^{13/} When it approved Verizon Wireless’s acquisition of ALLTEL, the FCC conditioned the transaction on Verizon Wireless’s commitment to honor all of ALLTEL’s roaming agreements, to allow roaming partners to use either their existing ALLTEL or Verizon Wireless roaming agreements, and to refrain from increasing roaming charges.^{14/} Presumably, these conditions will continue to apply to Verizon Wireless in the divested CMAs. They do not, however, address the problem of new entrants, such as Cox, that may not have an existing ALLTEL roaming agreement. Permitting these new entrants, upon whom AT&T and Verizon Wireless rely in arguing that competition negates the need for conditions,^{15/} to adopt either an existing ALLTEL or Verizon Wireless roaming agreement will blunt Verizon Wireless’s ability to impose excessive charges. Without this condition, carriers like Cox will have no bargaining leverage in the CMAs identified.

Nor do the conditions in the Verizon/ALLTEL merger order address the possibility that the divestiture of assets, which was designed to preserve competition,

^{13/} *Reexamination of Roaming Obligations of CMRS Providers*, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, 15828, ¶ 27 (2007).

^{14/} *Verizon/ALLTEL Merger Order*, at ¶ 178.

^{15/} See AT&T Public Interest Statement at 27 (identifying Cox and other cable providers as potential wireless competitors).

would result in the complete loss of CDMA coverage in some areas. In that transaction, the potential loss of ALLTEL's GSM interface was addressed through Verizon Wireless's commitment to operate ALLTEL's GSM network indefinitely along with its CDMA network.^{16/} AT&T's acquisition of ALLTEL's assets creates the very same concern, but with respect to the CDMA air interface. If allowed to shut this interface down in areas with no other alternative, the transaction would produce a result the FCC sought to avoid, the elimination of a critical air interface.

IV. CONCLUSION

For the reasons set forth above, Cox respectfully requests that the FCC condition the divestiture of ALLTEL's wireless facilities in the identified CMAs on AT&T's agreement to continue to operate and maintain ALLTEL's CDMA network and/or permit potential roaming partners to opt into any Verizon Wireless or ALLTEL CDMA roaming agreement for any area where Verizon Wireless is the sole CDMA roaming option. In the absence of such an agreement, the record does not support a finding that the transaction is in the public interest.

Respectfully submitted,

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Dated: August 6, 2009

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^{16/} *Verizon/ALLTEL Merger Order*, at ¶ 175.

EXHIBIT A

341	CA 6 - Mono	CA
351	CO 4 - Park	CO
352	CO 5 - Elbert	CO
353	CO 6 - San Miguel	CO
354	CO 7 - Saguache	CO
355	CO 8 - Kiowa	CO
356	CO 9 - Costilla	CO
482	MN 1 - Kittson	MN
483	MN 2 - Lake of the Woods	MN
488	MN 7 - Chippewa	MN
489	MN 8 - Lac Qui Parle	MN
490	MN 9 - Pipestone	MN
491	MN 10 - Le Sueur	MN
268	MT - Billings	MT
297	MT - Great Falls	MT
523	MT 1 - Lincoln	MT
524	MT 2 - Toole	MT
526	MT 4 - Daniels	MT
527	MT 5 - Mineral	MT
528	MT 6 - Deer Lodge	MT
529	MT 7 - Fergus	MT
530	MT 8 - Beaverhead	MT
531	MT 9 - Carbon	MT
532	MT 10 - Prairie	MT
221	ND - Fargo	ND
276	ND - Grand Forks	ND
298	ND - Bismarck	ND
580	ND 1 - Divide	ND
581	ND 2 - Bottineau	ND
582	ND 3 - Barnes	ND
583	ND 4 - Mckenzie	ND
584	ND 5 - Kidder	ND
285	Las Cruces	NM
553	NM 1 - San Juan	NM
557	NM 5 - Grant	NM
558	NM 6 - Lincoln	NM
544	NV 2 - Lander	NV
267	SD - Sioux Falls	SD
289	SD - Rapid City	SD
634	SD 1 - Harding	SD
635	SD 2 - Corson	SD
636	SD 3 - Mcpherson	SD

637	SD 4 - Marshall	SD
638	SD 5 - Custer	SD
639	SD 6 - Haakon	SD
640	SD 7 - Sully	SD
641	SD 8 - Kingsbury	SD
642	SD 9 - Hanson	SD
675	UT 3 - Juab	UT
676	UT 4 - Beaver	UT
677	UT 5 - Carbon	UT
678	UT 6 - Piute	UT
299	WY - Casper	WY
718	WY 1 - Park	WY
719	WY 2 - Sheridan	WY
721	WY 5 - Niobrara	WY
722	WY 5 - Converse	WY

CERTIFICATE OF SERVICE

I, Darren J. Abernethy, caused to be served on this sixth day of August, 2009, a true and correct copy of the foregoing Reply Comments of Cox Communications on the following parties via first-class mail (except as noted via electronic mail):

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