

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

In the Matter of)
)
Application of Atlantic Tele-Network, Inc. and)
Cellco Partnership d/b/a Verizon Wireless) WT Docket No. 09-119
)
For Consent to Assign or Transfer Control of)
Licenses and Authorizations)
)

To: The Commission

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

The National Association of Black Owned Broadcasters, Inc. ("NABOB"), by its attorneys, pursuant to Section 309(d)(1) of the Communication Act, 47 USC §309(d)(1) and Section 1.939 of the Commission's Rules, 47 CFR §1.939, hereby submits its Petition to Deny the above-captioned application of Cellco Partnership d/b/a Verizon Wireless ("VZW") seeking Commission consent to assign and transfer control of licenses and authorizations to Atlantic Tele-Network, Inc. ("ATN"), from the assets of ALLTEL, Inc. ("ALLTEL")(the "Application").

I. SUMMARY

In its Petition to Deny filed July 20, 2009, in WT Docket No. 09-104, NABOB demonstrated that VZW ignored the Commission's direction to make an effort to sell the Divestiture Assets to minorities, new entrants and small carriers, conducted a sham bidding process in which the sale to AT&T Inc. ("AT&T") was prearranged, and has continued the efforts of VZW and AT&T to push the mobile wireless industry into a duopoly controlled by these two dominant carriers. For these

reasons, NABOB requested that the VZW-AT&T Application be denied, or designated for hearing to investigate: (1) the extent to which VZW and AT&T had agreed to the proposed transaction while VZW pretended to entertain offers from other bidders, and (2) whether allowing VZW and AT&T to increase their national and local market dominance is in the public interest.

The instant transaction seeks to assign or transfer the remaining Divestiture Assets not sold to AT&T (the “Remaining Divestiture Assets”). Because the instant transaction is related to the transaction in WT Docket No. 09-104, and might not be consummated by the applicants if that transaction is not consummated, the Commission should consider the issues raised in the proceedings together. For the reasons set forth in its Petition to Deny in WT Docket No. 09-104, and for additional reasons set forth below, the Commission should deny the instant Application or, alternatively, designate it for a hearing along with the application in WT Docket No. 09-104.

Shortly after the announced sale of the vast majority of the Divestiture assets to AT&T, VZW announced the sale of the remaining Divestiture Assets to ATN. Aside from the serious issues raised by the VZW-AT&T transaction, the VZW-ATN transaction also raises issues. Specifically, NABOB submits that the VZW-ATN transaction provided ATN a substantially below market price, and, that substantially below market price was provided to ATN because of a conflict of interest that rendered the bidding process a sham.

In its Petition to Deny in WT Docket No. 09-104, NABOB demonstrated that the VZW-AT&T transaction reflected a manipulation of the Commission’s Divestiture Order. NABOB submits that the instant transaction demonstrate an additional manipulation of the Divestiture Order. Therefore, NABOB submits that the Commission must deny the Application and direct VZW to conduct a true bidding process that makes a real effort to sell the Divestiture Assets to minorities and

new entrants. In the alternative, the Commission should designate the Application for hearing to investigate the extent to which a conflict of interest prevented VZW and ATN from entering into an arms length transaction, resulted in ATN being given a substantially below market price for the Remaining Divestiture Assets, and thus precluded minorities, new entrants and smaller carriers from a fair opportunity to acquire the Remaining Divestiture Assets.

II. INTRODUCTION

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

Promotion of diversity of ownership in the telecommunications industry has been an important Commission policy for decades.¹ The policy is based upon the recognition that the control of the airwaves should be distributed among many different voices so that the voices of all segments of society, including those of racial minorities, can be heard.² In recent years, the convergence of technologies has broadened the telecommunications platforms from which the public receives the

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

² *Id.*

expression of ideas and information. As a result, Congress and the Commission have broadened their efforts to expand minority ownership opportunities to all telecommunications services.³

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

Members of NABOB are seeking to become owners of wireless services that will be part of the national broadband network. In particular, some members of NABOB bid to acquire the Divestiture Assets. In addition, members of NABOB are customers of VZW. Therefore, NABOB has vital interests in the proposed disposition of the Divestiture Assets and in the Commission's policies that will impact diversity of ownership in the wireless industry, and it, therefore, has standing to submit this Petition.

III. BACKGROUND

This proceeding evolved from the application of VZW for Commission approval of the transfer of the licenses, authorizations, spectrum manager and leasing arrangements of ALLTEL.⁵ In the VZW-ALLTEL proceeding, the Commission issued the Divestiture Order, ordering the

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

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

⁵ *Application of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings, LLC for Consent to Transfer Control of Licenses, Authorizations, Spectrum Manager, and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, 23 FCC Rcd 5922 (2009)(the proceeding is referred to herein as the "VZW-ALLTEL" proceeding, and the order issued is referred to as the "Divestiture Order").

applicants to divest all of the licenses and other assets of one of the applicants in 100 markets (the “Divestiture Assets”). The Commission ordered the divestitures, because it determined that, upon the acquisition of ALLTEL, VZW would have too much market power in the divestiture markets, and it was “likely the merged entity could behave in an anticompetitive manner because of its high combined market share.”⁶

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

In the Divestiture Order, the Commission declined to place any restrictions on the acquirer that would limit the size or other attributes of any potential acquirer. However, the Commission noted that “the qualifications of the entity(ies) acquiring the Divestiture Assets and whether the specific transaction is in the public interest will be evaluated when an application is filed seeking the Commission’s consent to the transfer or assignment of the Divestiture Assets.”⁹ The Commission then added, “[W]e encourage Verizon Wireless to consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned

⁶ Divestiture Order at par. 103.

⁷ *Id.* at par. 160.

⁸ *Id.*

⁹ *Id.* at par. 162.

by minorities or socially disadvantaged groups in acquiring the Divestiture Assets and/or accessing spectrum, to the extent possible.¹⁰

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

IV. THE COMMISSION'S STANDARD OF REVIEW

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

As NABOB shall demonstrate below, the proposed transaction will do serious damage to the

¹⁰ *Id.* at par. 162.

¹¹ *Id.* at par. 26.

¹² *Id.* at par. 27.

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

Commission's statutory duty to promote diversity of ownership in the telecommunications industry and fails to demonstrate that other public interest benefits will offset this damage to diversity of ownership. Therefore, the Commission must deny the application or designate it for hearing, pursuant to Section 309(e) of the Communications Act.¹⁴

V. THE BIDDING PROCESS WAS A SHAM

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

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

Morgan Stanley announced at the outset that VZW preferred to sell all of the Divestiture Assets to a single purchaser. This preference made it clear that no minority purchaser was a preferred purchaser, because it was very unlikely that a minority purchaser, or any new entrant, could finance such an acquisition. Rather, the message from the outset was that there would be no special effort to sell to a minority or new entrant. Thus, in spite of the external appearance of an open

Hearing Designation Order").

process, the bidding was set up to favor a large existing carrier from the beginning. Obviously, this meant the process was set up to favor AT&T from the outset.

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

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

The conclusion that the sale to AT&T was predetermined was made even more clear when the *Wall Street Journal* reported the announced sale. In the same article in which the sale of the Divestiture Assets to AT&T was announced, it was reported that in a separate transaction, VZW

¹⁴ EchoStar Hearing Designation Order, supra. at 20620.

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

agreed to purchase several service areas from AT&T.¹⁶ In other words, this was a situation in which the two industry behemoths traded licenses to carve up the country for themselves. The Commission must also look into whether the “swap agreement” between Verizon and AT&T from the proposed acquisition of Centennial Communications Corp. by AT&T constituted another barrier to other bidders for the Divestiture Assets.¹⁷ If it was, this is further evidence that bidding for the Divestiture Assets was a sham from the start, and its results cannot be approved by the Commission.

VI. THE AGREEMENT TO SELL THE REMAINING DIVESTITURE ASSETS TO ATN AT A SUBSTANTIALLY BELOW MARKET PRICE RESULTS FROM A CONFLICT OF INTEREST

Shortly after the announced sale of the vast majority of the Divestiture assets to AT&T, VZW announced the sale of the remaining Divestiture Assets to ATN. The VZW-ATN transaction raises serious issues regarding the price at which these Divestiture Assets have been sold to ATN. Specifically, NABOB submits that the ATN transaction was provided to ATN at a substantially below market price, and, that substantially below market price was provided to ATN because of a conflict of interest that rendered the bidding process a sham.

In its Petition to Deny in WT Docket No. 09-104, NABOB demonstrated that the VZW-AT&T transaction resulted from a manipulation of the Commission’s Divestiture Order. NABOB submits that the instant transaction demonstrates an additional manipulation of the Divestiture Order. The purchase at which ATN is receiving the remaining Divestiture Assets is substantially below the current market price for such assets. In the acquisition of the ALLTEL assets, VZW paid

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

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

approximately \$2,145.00 per subscriber for the assets. In the VZW-AT&T transaction proposed in WT Docket No. 09-104, AT&T proposes to pay \$1,566.00 per subscriber. In the instant transaction ATN proposes to pay VZW \$250.00 per subscriber. This is a substantial discrepancy from the prices paid in the two other recent transactions. Moreover, this large discrepancy cannot be explained away merely because of the relatively smaller size of the transaction nor from the fact that these are rural markets. The markets in the other transactions were also rural markets. Moreover, NABOB is advised that other bidders bid substantially more for some or all of the Remaining Divestiture Assets.

However, there is an explanation for the substantially below market price in this transaction. Morgan Stanley, which acted as the broker of the transaction for VZW, held a substantial stake in ATN. Attached as Exhibit 1 is a copy of Morgan Stanley's trades in ATN stock during the time that Morgan Stanley represented VZW with respect to the ALLTEL transaction. In his Declaration submitted with the VZW-AT&T "Joint Opposition of AT&T Inc. and Verizon Wireless to Petitions to Deny or to Condition Consent and Reply Comments" filed in WT Docket no. 09-104, Christopher J. Bartlett, Executive Director, Investment Banking Division, Morgan Stanley & Co., Incorporated, states that Morgan Stanley began representing VZW in connection with its acquisition of ALLTEL in March 2007. He also states that beginning August and September 2008, Morgan Stanley began working with VZW on the sale of the Divestiture Assets.

NABOB's Exhibit 1 attached shows that, in March 2007, when Morgan Stanley was first engaged by VZW, it owned no ATN stock. However, beginning in May 2007, Morgan Stanley began acquiring ATN shares. In May 2008, just before Morgan Stanley officially changed its role from representing VZW in the acquisition of ALLTEL to representing VZW in the sale of the Divestiture Assets, Morgan Stanley tripled its holdings in ATN, and a substantial purchase was made

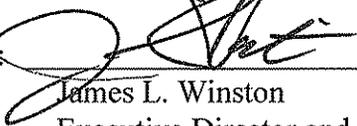
during the bidding process. Morgan Stanley sold some of these shares, but still retained a significant ownership interest in ATN at the time that VZW announced the sale of the remaining Divestiture Assets to ATN. This clearly gives the appearance of a conflict of interest on the part of Morgan Stanley. In another example of favoritism, while Morgan Stanley was informing bidders that bids had to have “no financing contingencies”, ATN was permitted such a contingency. In its press release of June 8, 2009, ATN announced that some of the funds it intended to use for the purchase were “subject to lender consent, under its term credit facility”. Moreover, the appearance of a conflict of interest is increased by the substantially below market price described above. The conflict of interest must be investigated in a hearing.

VII. CONCLUSION

NABOB submits that the Commission must deny the Application and direct VZW to conduct a true bidding process that makes a real effort to sell the Divestiture Assets to minorities and new entrants. In the alternative, the Commission should designate the Application for hearing, pursuant to Section 309(e), to investigate the extent to which conflicts of interest prevented VZW and ATN from entering into an arms length transaction, resulted in ATN being given a substantially below market price for the remaining Divestiture Assets it proposes to acquire, and thus precluded minorities, new entrants and smaller carriers from a fair opportunity to acquire the remaining Divestiture Assets.

Respectfully submitted,

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

By: 

James L. Winston
Executive Director and
General Counsel
National Association of Black Owned
Broadcasters, Inc.
1155 Connecticut Avenue, N.W.
Suite 600
Washington, D.C. 20036
(202) 463-8970

August 10, 2009

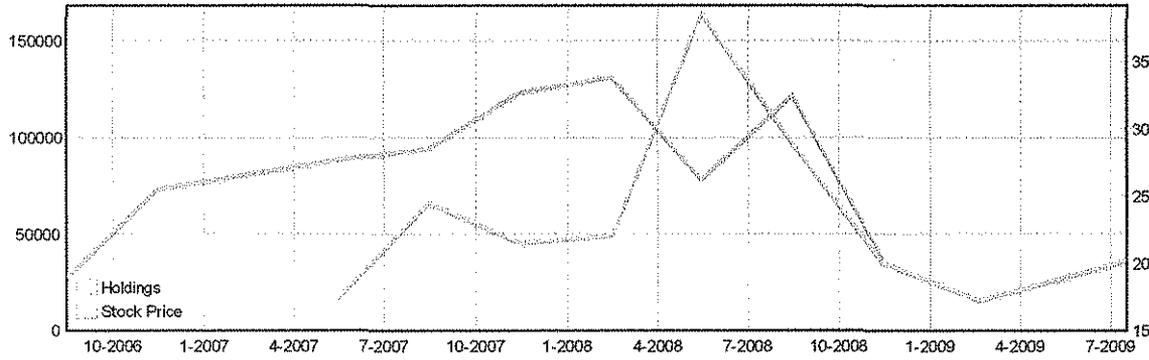
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History of Morgan Stanley ownership of Atlantic Tele-Network Inc (ATNI)



Show: (if you do not see any data, try rechecking below)

- Holdings
- Stock Price

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- Filed
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- FullName
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- Country
- Industry
- Shares
- Activity
- Shares Change
- Shares Change Pct.
- Hypothetical Old Value
- Hypothetical New Value
- Hypothetical Value Chg.
- Hypothetical Return
- Hypothetical Results
- Director
- Ten Pct
- Other
- Officer
- Officer Title
- History

Holdings/Transactions

Filed	As-Of/On	Form	Fullname	Symbol	Country	Industry	Shares	Activity	Shares Change	Shares Pct. Change	Hypothetical Old Value	Hypothetical New Value	Hypothetical Value Chg.	Hypothetical Return	Hypothetical Results	Dir
2009-07-17	2009-03-31	13F-HR/A	Atlantic Tele-Network Inc	ATNI	US	Telephone-Integrated	36,772	Added More	20,695	128.72 %	\$1,425,650	\$1,470,512	\$44,862	3.14 %	\$25,248	
2009-02-19	2008-12-31	13F-HR	Atlantic Tele-Network Inc	ATNI	US	Telephone-Integrated	16,077	Sold Some	-19,643	-54.99 %	-	\$642,919	-	- %		
2008-11-14	2008-09-30	13F-HR	Atlantic Tele-Network Inc	ATNI	US	Telephone-Integrated	35,720	Sold Some	-61,727	-63.34 %	\$732,617	\$1,428,443	\$695,826	94.97 %	\$-1,202,442	
2008-08-15	2008-06-30	13F-HR	Atlantic Tele-Network Inc	ATNI	US	Telephone-Integrated	97,447	Sold Some	-67,587	-40.95 %	\$3,175,798	\$3,896,906	\$721,108	22.70 %	\$-500,144	
2008-05-15	2008-03-31	13F-HR	Atlantic Tele-Network Inc	ATNI	US	Telephone-Integrated	165,034	Added More	115,237	231.41 %	\$4,340,394	\$6,599,710	\$2,259,315	52.05 %	\$1,577,595	
2008-02-15	2007-12-31	13F-HR	Atlantic Tele-Network Inc	ATNI	US	Telephone-Integrated	49,797	Added More	3,995	8.72 %	\$1,689,114	\$1,991,382	\$302,268	17.89 %	\$24,250	
2007-11-15	2007-09-30	13F-HR	Atlantic Tele-Network Inc	ATNI	US	Telephone-Integrated	45,802	Sold Some	-21,015	-31.45 %	\$1,505,054	\$1,831,622	\$326,568	21.69 %	\$-149,837	
2007-08-15	2007-06-30	13F-HR	Atlantic Tele-Network Inc	ATNI	US	Telephone-Integrated	66,817	Added More	49,511	288.33 %	\$1,912,971	\$2,672,012	\$759,041	39.67 %	\$563,581	
2007-05-15	2007-03-31	13F-HR	Atlantic Tele-Network Inc	ATNI	US	Telephone-Integrated	17,206	New Holding	17,206	100 %	\$477,811	\$688,068	\$210,257	44.00 %	\$210,257	
2006-11-15	2006-09-30	13F-HR	Atlantic Tele-Network Inc	ATNI	US	Telephone-Integrated	0	Sold All	-16,844	-100 %	-	-	-	56.08 %	\$-242,048	

2006-08-15	2006-06-30	13F-HR	Atlantic Tele-Net Inc	ATNI	US	Telephone- Integrated	16,844	New Holding	16,844	100 %	\$319,868	\$673,592	\$353,724	110.58 %	\$353,724
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Returned 11 Transactions!

*Note: All amounts are based on price of stock at date reported versus the current price! They do not represent actual profit/loss!
There has been no adjustments for splits!*

Note: All amounts in USD, converted using IntraBank Exchange Rate on Date Reported/Today

Information is provided 'as is' and solely for informational purposes, not for trading purposes or advice, and may be inaccurate!

Note: For security reasons, only (A-Z,a-z,0-9,space,period,colon,comma,forward slash,at) can be inputted - all others are stripped automatically!

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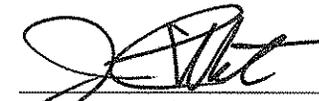
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DECLARATION

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

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

Date: August 10, 2009



James L. Winston

CERTIFICATE OF SERVICE

I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P., do hereby certify that on August 10, 2009, true copies of the foregoing "Petition to Deny" were mailed, first class U.S. mail, postage pre-paid to the following:

Nancy J. Victory
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
Counsel for Cellco Partnership

Douglas J. Minster
Atlantic Tele-Network, Inc.
10 Derby Square
Salem, MA 01970

Julius Genachowski*
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Michael J. Copps*
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Robert M. McDowell*
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

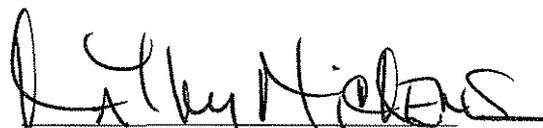
Mignon Clyburn*
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Meredith Attwell Baker*
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

James Schlichting*
Acting Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Erin McGrath*
Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

* Delivered via email



Kathy Nickens

August 10, 2009