

**Before the
Federal Communications Commission
Washington, DC 20554**

In re Applications of)	
)	
CELLCO PARTNERSHIP DBA)	
VERIZON WIRELESS, Transferor)	
)	
and)	WT Docket No. 09-104
)	
AT&T INC., Transferee)	
)	
for Consent to the Transfer of Control of)	File Nos. 0003840313, <i>et al.</i>
Commission Licenses and Authorizations)	
Pursuant to Sections 214 and 310(d) of the)	
Communications Act)	

REPLY TO JOINT OPPOSITION TO PETITIONS TO DENY

The Rural Telecommunications Group, Inc. (“RTG”), by its attorneys and pursuant to 47 C.F.R. § 1.939 and the Public Notice of the Federal Communications Commission (“FCC” or “Commission”) released June 19, 2009¹, hereby files its Reply to Joint Opposition of AT&T, Inc. and Verizon Wireless to Petitions to Deny or to Condition Consent and Reply to Comments

¹ *AT&T, Inc. and Cellco Partnership DBA 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, Pleading Cycle Established*, FCC Public Notice, DA 09-1350 (released June 19, 2009 (“Public Notice”). Pursuant to Section 1.45 of the FCC’s Rules, replies to the Joint Opposition are due five business days after the time for filing oppositions has expired. Accordingly, based on the July 30, 2009 deadline for filing oppositions, RTG’s reply would ordinarily be due on August 6, 2009. However, because AT&T and Verizon Wireless elected to serve RTG only by United States mail, RTG is entitled, pursuant to Section 1.4(h) of the Commission’s rules, to an additional three mailing days (i.e., until August 11, 2009) in which to file its Reply. Because the Public Notice specified an August 6, 2009 deadline for filing a reply, RTG out of an abundance of caution, filed a Motion for Extension of Time (Motion) on August 3, 2009 requesting consent to file its reply on or before August 11, 2009. Prior to filing its Motion, RTG orally notified all of the parties and FCC staff that it would file a Motion seeking to enforce its rights to the three additional days. AT&T and Verizon Wireless filed a joint Response to RTG’s Motion on August 5, 2009 stating that they take no position on the Motion. AT&T and Verizon attached to their joint response a copy of an email sent by counsel to RTG which AT&T and Verizon Wireless argue constitutes consent to service by mail. RTG notes for the record that the email in which RTG consented to service by mail related to *another* docketed proceeding, and in no way constituted consent to service of the Joint Opposition in this proceeding by mail.

(“Joint Opposition”)² filed by AT&T, Inc. (“AT&T”) and Verizon Wireless (“Verizon”) (together, the “Applicants”) in the above captioned proceeding and renews its request for the Commission to designate the above-captioned applications for a hearing pursuant to Section 309(e) of the Communications Act of 1934, as amended (“the Act”) to resolve material issues of fact and to ultimately determine whether the grant of the applications is in the public interest.

In its petition to deny the applications, RTG asserted that the proposed transaction is not in the public interest because the Applicants are attempting to perpetuate a duopolistic commercial mobile radio services (CMRS) industry in this country, and especially in rural America.³ Furthermore, RTG requested that the Commission designate the applications for hearing, or alternatively, compel the Applicants to furnish additional information to support their public interest claims.⁴ Finally, RTG requested that the Commission, should it ultimately proceed with the proposed transaction, impose certain conditions on the Applicants.⁵ In their Joint Opposition, the Applicants have attempted to deemphasize, brush aside, or outright ignore the legitimate concerns of RTG and other concerned parties to the proceeding.

I. AT&T AND VERIZON HAVE FAILED TO REFUTE THE LIKELIHOOD THAT THE PROPOSED TRANSACTION WILL RESULT IN AN ANTICOMPETITIVE CMRS DUOPOLY.

RTG does not disagree with the Applicants’ assertion that “[r]ecent history shows that the competition between Verizon Wireless and AT&T has driven each company in efforts to surpass

² 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 (filed July 30, 2009) (“Joint Opposition”).

³ Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 09-104 (filed July 20, 2009) (“RTG Petition to Deny”) at 4-9.

⁴ RTG Petition to Deny at 10-11.

⁵ RTG Petition to Deny at 11-14.

the other.”⁶ However, this jockeying for supremacy between the two largest CMRS operators does not in any way justify the presence of a burgeoning duopoly, nor does it remove the likelihood that duopoly actors can and will support each other in an effort to disable or remove common competition. The Applicants would like the Commission to believe that “creat[ing] challenges for some carriers...is good for consumers and manifestly in the public interest.”⁷ In fact, it is the rural consumers who are most negatively impacted when small and rural CMRS operators are unable to compete in a stacked marketplace with two operators having overwhelming market power.

RTG is justifiably concerned that the Applicants will engage in predatory pricing in markets where only AT&T and Verizon have facilities-based networks. The Applicants dismiss this concern by stating only that it is “neither supported nor credible.”⁸ What the Applicants are really suggesting is that the Commission take a leap of faith, approve the transaction, and hope that these practices do not materialize. According to the Applicants’ argument, small and rural operators must first go out of business in these markets before proving the consumer harms and anticompetitive concerns. If that is so, then the damage is already done. True choice among rural consumers can only be upheld through viable options outside of either AT&T or Verizon. The Applicants further contend that it is not predatory “merely to price below a less-efficient competitor’s cost.”⁹ A huge reason why small and rural CMRS operators are less efficient is because they lack the economies of scale and scope experienced by the Applicants, economic

⁶ Joint Opposition at 6.

⁷ Joint Opposition at 7.

⁸ Joint Opposition at 7.

⁹ Joint Opposition at 7.

benefits that are not only a direct result of unbridled consolidation in the last few years but also benefits that are afforded only to these two market players. The nature of the marketplace and the size of the Applicants make it impossible for these economies of scope and scale to be replicated by other market players regardless of the actions they take.

The Applicants labeled as “incorrect” and “mistaken” RTG’s assertion that this transaction will result in large areas of the country being served by only two operators: AT&T and Verizon.¹⁰ RTG stands by this prognosis and again reminds the Commission that the next largest CMRS operators (Sprint Nextel and T-Mobile) are not viable competitors in many of these 79 CMAs. When RTG stated in its Petition to Deny that Sprint Nextel and T-Mobile are “noticeably absent from many of these 79 CMAs,”¹¹ RTG is not disputing the fact that Sprint Nextel and T-Mobile possess spectrum in each of these 79 CMAs. RTG is only reminding the Commission and the Applicants that those two CMRS operators have little to no facilities-based networks and are dependent upon roaming. Until recently, AT&T was in the same position in these same markets! The chasm between theoretical competition (by virtue of spectrum ownership) and actual competition (by virtue of network presence) is wide and deep. The simple fact remains that neither Sprint Nextel nor T-Mobile, and certainly no small or rural operators, are in a position to compete *tomorrow* with AT&T and Verizon. The vast array of theoretical competition proffered by the Applicants does nothing to offer realistic choices for the American consumer making choices in the present.

Finally, the Applicants contend that this proposed transaction will benefit consumers in the affected markets because they are replacing a regional operator (ALLTEL) with a more

¹⁰ Joint Opposition at 8.

¹¹ RTG Petition to Deny at 8.

robust national operator (AT&T).¹² However, as RTG asserted in its petition to deny in the original ALLTEL-Verizon transaction, it was precisely because of regional operators such as ALLTEL that AT&T and Verizon were kept in check from assuming an insurmountable market position not only because ALLTEL was a niche player in the retail marketplace, but also because ALLTEL was relied upon by all CMRS operators, large and small, for roaming coverage.¹³ RTG is not alone in its concern that as a result of this proposed transaction AT&T will immediately and irreparably remove a long-running roaming option for millions of Americans across dozens of states. In their reply comments, Sprint Nextel Corp., Cox Communications, Inc., and Public Service Communications, Inc. all correctly noted that AT&T intends to shutter its newly acquired CDMA network and in the process deny a competitive roaming option to tens of millions Americans.¹⁴ The elimination, overnight, of such an immensely large roaming network is antithetical to the public interest, and for that reason alone, the Commission should deny its consent to the proposed transaction.

Now that Verizon and AT&T are in the final stages of dividing up the assets of ALLTEL, the country has lost a strong retail competitor, an indispensable roaming partner for dozens of CDMA and GSM operators, and rural wireless consumers in dozens of markets are now faced with a choice of only two CMRS operators – the textbook definition of duopoly.

¹² Joint Opposition at 8.

¹³ *In re Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Wireless LLC For Consent to Transfer Control of Licenses, Authorizations and Spectrum Manager and De Facto Transfer Leasing Arrangements*, Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 08-95 (filed August 11, 2008) at 9-12.

¹⁴ See Reply Comments of Sprint Nextel Corp.(filed August 6, 2009) at 2; Reply Comments of Cox Communications, Inc. (filed August 6, 2009) at 4-5; Reply Comments of Public Service Communications, Inc. (filed August 6, 2009) at 4.

II. THE PROPOSED TRANSACTION-SPECIFIC CONDITIONS SHOULD BE ADOPTED

The Applicants contend that “the Commission should reject opponents’ efforts to dictate the terms of roaming agreements with AT&T” because “it is not within the scope of this proceeding.” Nothing can be further from the truth. The Applicants made the issues of not just in-market roaming, but all automatic roaming activity including data roaming, germane to this proceeding by proposing the transaction in the first place. RTG petitioned the Commission either to designate the applications for hearing,¹⁵ or alternatively, to request additional information from the Applicants about their future operational and roaming plans.¹⁶ Thus far, the Applicants have remained completely silent on a host of matters critical to the Commission’s assessment of the impact of the proposed transaction on the public interest, including most notably, the status of roaming in markets to be acquired by AT&T should this transaction be approved. Verizon, as part of its acquisition of ALLTEL, is required by the FCC to honor a number of roaming conditions.¹⁷ The same roaming conditions that Verizon and ALLTEL agreed to in order to get the Commission to go along with the merger need to be also passed through to AT&T for these 79 former ALLTEL markets that AT&T is now seeking to acquire. It would be illogical to think that just because these 79 markets are being divested to AT&T instead of remaining with Verizon, that the same roaming conditions should not apply post-transaction to AT&T.

¹⁵ RTG Petition to Deny at 10-11.

¹⁶ RTG Petition to Deny at 11.

¹⁷ *In re Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Wireless LLC For Consent to Transfer Control of Licenses, Authorizations and Spectrum Manager and De Facto Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 08-95 (released November 10, 2008) at 78-84.

Additionally, if Verizon truly believes that matters such as in-market roaming were adequately addressed in the *Roaming Order*¹⁸, and that the Commission should “not get involved...in roaming agreements freely negotiated in the marketplace,”¹⁹ then why would it unilaterally request that Congress intervene and create new rules or regulations dealing specifically with in-market roaming and therefore directly affecting roaming agreements entered into between CMRS operators?²⁰ Numerous CMRS operators, both large and small, both GSM and CDMA, and both urban and rural, currently depend upon the divested assets (composed primarily of former ALLTEL markets) for roaming coverage. It is completely appropriate that conditions related to data and in-market roaming be imposed as part of any approval of this proposed transaction.

The Applicants contend that the Commission should not consider claims that are not transaction-specific. Specifically, AT&T and Verizon believe that issues raised by RTG and Cellular South such as automatic data roaming and restrictions on exclusive handsets are best addressed in other proceedings.²¹ If the Commission agrees with AT&T and Verizon that those proceedings are the appropriate vehicle to address these issues, it should hold this proceeding in abeyance pending the outcome of those other proceedings. The issues of automatic in-market roaming, data roaming and handset exclusivity are ripe for a more thorough treatment by the

¹⁸ *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 05-265 (released August 16, 2007) (“*Roaming Order*”).

¹⁹ Joint Opposition at 17-18.

²⁰ Letter from Lowell C. McAdam, President and CEO of Verizon Wireless to the Honorable Henry Waxman, Chairman, dated July 22, 2009 (“Waxman Letter”).

²¹ Joint Opposition at 28-29.

Commission and they are certainly issues that, if left as is, facilitate an anticompetitive CMRS marketplace and insulate the Applicants' hegemonic duopoly.

III. CONCLUSION

For the foregoing reasons, RTG respectfully requests that the Commission deny the above-captioned Applications or alternatively designate the applications for hearing pursuant to Section 309(e) and/or request additional information from the Applicants before issuing a final order. If the Commission chooses to grant the Applications, RTG respectfully requests that the Commission condition the grant of the Applications as requested in its Petition to Deny to ensure that the public interest is served.

Respectfully submitted,

**The Rural Telecommunications
Group, Inc.**

/s/ Caressa D. Bennet

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August 11, 2009

CERTIFICATE OF SERVICE

I, Colleen von Hollen, of Bennet & Bennet, PLLC, 4350 East West Highway, Suite 201, Bethesda, MD 20814, hereby certify that a copy of the foregoing Reply to Joint Opposition to Petitions to Deny of the Rural Telecommunications Group, Inc. was served on this 11th day of August, 2009, by email on those listed below:

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