

“The Commission may overrule or limit its prior decisions by advancing a reasoned explanation for the change, but it may not blithely cast them aside.”⁴⁴ In the *Verizon-Alltel Order*, however, the Commission “blithely cast aside” two policies it has consistently maintained in prior decisions: its methods for evaluating foreign ownership and its policy of policing foreign ownership strictly even to the detriment of other high priority goals. Because the *Verizon-Alltel Order* strikingly conflicts with existing precedent, the Commission had an obligation to provide a reasoned explanation for applying a different standard to Verizon Wireless. As discussed below, the Commission did not provide any such explanation.

B. The Commission Did Not Properly Distinguish *América Móvil*.

“A long line of precedent has established that an agency action is arbitrary when the agency offer[s] insufficient reasons for treating similar situations differently.”⁴⁵ Therefore, when the Commission treats an applicant differently than it has treated an apparently similar applicant in a prior decision, the Commission must explain its departure from precedent. If the agency distinguishes the previous case based on its facts, then the agency must cite a distinction logically related to the underlying policy goals the agency intends to achieve. Indeed, the Supreme Court has explained that factual distinctions between cases “serve to distinguish the cases only when some legislative policy makes the differences relevant to determining the proper scope of the prior rule.”⁴⁶ Therefore, “[if] the agency distinguishes earlier cases[, it must]

⁴⁴ *Tel. & Data Sys., Inc. v. FCC*, 19 F.3d 42, 49 (D.C. Cir. 1994) (citing *Rainbow B'casting Co. v. FCC*, 949 F.2d 405, 408 (D.C. Cir. 1991); *Telecomms. Research & Action Ctr. v. FCC*, 800 F.2d 1181, 1184 (D.C. Cir. 1986)).

⁴⁵ *County of Los Angeles v. Shalala*, 192 F.3d 1005, 1022 (D.C. Cir. 1999) (quoting *Transactive Corp. v. United States*, 91 F.3d 232, 237 (D.C. Cir. 1996)).

⁴⁶ *Atchison, Topeka Santa Fe Railway Corp. v. Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973).

assert[] distinctions that, when fairly and sympathetically read in the context of the entire opinion of the agency, reveal the policies it is pursuing.”⁴⁷

In the *Verizon-Alltel Order*, the Commission entirely failed to provide an adequate explanation for refusing to follow its decision in *América Móvil*, which explicitly rejected the use of shareholder addresses as a basis for assessing ownership under Section 310(b). América Móvil, like the partners of Verizon Wireless, was a publicly held corporation with widely dispersed stockholdings. América Móvil sought to have the Commission “infer that the citizenship of the company’s beneficial owners typically will correspond to: (1) the registered addresses of stockholders that have taken possession of their stock certificates; and (2) the addresses of custodian banks and brokers that hold shares for the more numerous owners that have chosen not to possess the stock certificates.”⁴⁸ The Commission, however, flatly refused: “we decline, based on the record in this proceeding, to change the Commission’s precedent by accepting street addresses of stockholders and banks as an indicator of citizenship of the beneficial owners.”⁴⁹

In contrast, responding to objections based on *América Móvil* in CAPCC’s Petition to Deny, the Commission stated:

As a factual matter, we believe that [CAPCC] misconstrues the methodology that Verizon Wireless has used to demonstrate compliance with its section 310(b)(4) ruling. Verizon Wireless has provided the Commission with aggregate information regarding the *addresses of record* of nearly 100 percent of the

⁴⁷ *Shaw’s Supermarkets, Inc.*, 884 F.2d at 36 (quoting *Atchison, Topeka Santa Fe Railway Corp.*, 412 U.S. at 809) (alterations in original); see also *Tel. & Data Sys. v. FCC*, 19 F.3d 42, 50 (D.C. Cir. 1994).

⁴⁸ *América Móvil*, 22 FCC Rcd at 6222-23.

⁴⁹ *Id.* The Commission eventually was able to grant the América Móvil application with extensive conditions, based on a finding that the shares analyzed using shareholder “registered addresses” were almost all non-voting shares and that more than 93 percent of the voting rights were held by a trust controlled by a single family. Those conditions are not present, of course, for the Verizon Wireless partners.

beneficial owners of Verizon and Vodafone stock. Thus, in contrast to the foreign ownership information we rejected in the *América Móvil Order*, the Verizon Wireless data does not rely on “the addresses of custodian banks and brokers that hold shares for the more numerous owners that have chosen not to possess the stock certificates.”⁵⁰

This explanation entirely fails to show that Verizon Wireless’s Section 310(b)(4) showing did something other than presume stockholder citizenship from stockholder addresses. the very presumption that the Commission found insufficient in *América Móvil*. The Commission has an obligation in adjudications to explain its departure from settled precedent and to articulate the reason for that decision in light of the underlying policy.⁵¹ Thus, CAPCC did not “misconstrue” Verizon Wireless’s methodology, and, as discussed below, the Commission did not distinguish *América Móvil* on grounds sufficient to withstand judicial review under an arbitrary and capricious standard.

In fact, just as in *América Móvil*, the street (or post office box) address supplied by a shareholder, as Verizon Wireless acknowledged,⁵² only discloses the location of the place or the agent to which the stockholder wants information sent; it has no necessary relationship with the Section 310(b) status of the stockholder under the interpretation of Section 310(b) that the Commission applies to everyone but Verizon Wireless. Thus, Verizon Wireless’s showing was deficient for *exactly the same reasons* that a showing based on addresses was deficient in *América Móvil*, and the Commission’s approval of that showing just for Verizon Wireless was arbitrary and capricious.

⁵⁰ *Verizon-Alltel Order*, 23 FCC Rcd at 17544-45 (quoting *América Móvil*, 22 FCC Rcd at 6222-23) (emphasis added).

⁵¹ *See Kidd Commc'ns v. FCC*, 427 F.3d 1, 4-6 (D.C. Cir. 2005).

⁵² Verizon Wireless, Opposition to Chatham Avalon Park Community Council’s Petition for Reconsideration, WT Docket No. 07-208, filed August 28, 2008, at 8.

Accordingly, the Commission cannot change its current policy rejecting shareholder street addresses to establish a new definition of “foreign ownership” under Section 310(b) just for Verizon Wireless without overruling *América Móvil* and acknowledging that all applicants in all services may use the same definitions of “foreign ownership” that Verizon Wireless used here. By departing from precedent, the Commission incurred an obligation to explain its change in policy. Approval of Verizon Wireless’s reliance on shareholder addresses to meet its Section 310(b)(4) showing cannot be reconciled with the Commission’s precedent for calculating foreign ownership as illustrated by the *América Móvil* decision.⁵³ “The law that governs an agency’s significant departure from its own prior precedent is clear. The agency cannot do so without explicitly recognizing that it is doing so and explaining why.”⁵⁴ Accordingly, the Commission’s inconsistent treatment of Verizon Wireless vis-à-vis its prior treatment of Verizon Wireless’s competitors gave rise to an obligation for the Commission to recognize and provide a reasoned explanation for its apparent inconsistency.

C. The Commission Improperly Relied on *WWOR-TV* and the *Mobile Satellite Ventures* Decisions to Support the Use of Shareholder Addresses “On a Fact-Specific, Case-by-Case Basis.”

In the *Verizon-Alltel Order*, the Commission attempted to show that it was following precedent with respect to reliance on shareholder addresses for a 310(b)(4) showing, stating that “[t]he Commission has permitted public companies to use methods other than random surveys, including the collection of shareholder addresses, on a fact-specific, case-by-case basis.”⁵⁵ In support of this statement, the Commission cited its 1991 *WWOR-TV* decision and its 2006 and 2008 decisions concerning the ownership of Mobile Satellite Ventures Subsidiary LLC

⁵³ See generally *América Móvil*, 22 FCC Rcd 6195.

⁵⁴ *Shaw’s Supermarkets, Inc. v. NLRB*, 884 F.2d 34, 36 (1st Cir. 1989).

⁵⁵ See *Verizon-Alltel Order*, 23 FCC Rcd at 17544-45.

(“MSV”).⁵⁶ These cases do not support its decision in the *Verizon-Alltel Order*. First, none of these cases actually demonstrates a Commission policy, or a conscious change in Commission policy, with respect to the use of shareholder addresses to demonstrate permissible levels of foreign ownership. (Indeed, uncited portions of *WWOR-TV* flatly contradict the Commission’s conclusion.) Second, the Commission failed to identify any facts and circumstances that it relied upon to allow Verizon Wireless’s showing on a “fact-specific, case-by-case basis.”

1. The Cases Cited by the Commission Provide No Precedent for Allowing Verizon Wireless to Rely on Shareholder Addresses in its 310(b) Showing.

Neither *WWOR-TV* nor the two MSV decisions provide a precedent for the Commission’s decision to allow Verizon Wireless to rely on shareholder addresses. In *WWOR-TV*, the Commission permitted a *pro forma* transfer of control of station WWOR-TV, Secaucus, New Jersey, from its parent corporation, MCA, to an entity owned by substantially the same set of shareholders.⁵⁷ Prior to the transfer, MCA had performed an alien ownership sample survey that, under worst-case assumptions regarding the outcome of intervening transactions, showed that MCA’s foreign ownership fell below the 25-percent guideline, and it then confirmed the results of that survey when it filed a *pro forma* application to see if shareholder addresses had changed.

⁵⁶ See *id.* (citing *WWOR-TV, Inc. For Transfer of Control of Station WWOR-TV, Licensee of Station WWOR-TV, Channel 9 Secaucus, New Jersey*, Memorandum Opinion and Order, 6 FCC Rcd 6569, 6572 (rel. Nov. 13, 1991) [hereinafter “*WWOR-TV*”], *appeal dismissed sub nom. Garden State Broadcasting Ltd. Partnership v. F.C.C.*, 996 F.2d 386 (D.C. Cir. 1993); *Motient Corporation and Subsidiaries, Transferors, and SkyTerra Communications, Inc., Transferee, Application for Authority to Transfer Control of Mobile Satellite Ventures Subsidiary LLC*, WC Docket No. 06-106, Memorandum Opinion and Order and Declaratory Ruling, 21 FCC Rcd 10198, 10216 (IB rel. Sept. 15, 2006) [hereinafter “*MSV 2006*”]; *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc. Petition for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended: Hurbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P. Petition for Expedited Action for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended*, Order and Declaratory Ruling, 23 FCC Rcd 4436, 4461-62 (rel. March 7, 2008) [hereinafter “*MSV 2008*”]).

In contrast to Verizon Wireless, which filed for a “substantial” transfer of ownership, MCA was not required to certify its Section 310(b) qualifications in a *pro forma* application.⁵⁸ In response to Whitely Communications’ petition for reconsideration, the Commission cited MCA’s previous alien ownership survey and described its initial decision as follows:

[W]e would not require a new survey in connection with a *short-form transfer application* in the absence of a well-founded question as to compliance with the Act. . . .⁵⁹

The Commission also stated that “*relying on mailing addresses is not a substitute for a random survey.*” and expressed the expectation that “in connection with the preparation of any subsequent renewal application, [the transferee] will use *reasonable methods* to insure compliance with section 310(b).”⁶⁰ *WWOR-TV* therefore provides no basis for the Commission to approve Verizon Wireless’s total reliance on shareholder addresses to demonstrate compliance with Section 310(b) in the context of a long-form transfer of control and contradicts the Commission’s holding in the *Verizon-Alltel Order*.

The *MSV 2006* decision also does not address citizenship presumptions from stockholder addresses; the decision does not mention the issue and gives no indication that the issue was raised or considered in the proceeding.⁶¹ At most, one of many filings in that proceeding mentions that a minority shareholder several levels removed from the licensee consulted shareholder addresses. Accordingly, to cite the *MSV 2006* decision as a precedent for reliance on stockholder addresses, the Commission in essence would have to conclude that it somehow invalidated *sub silentio* a consistent, express line of precedent by overlooking an application

⁵⁷ See *WWOR-TV*, 6 FCC Rcd at 6569.

⁵⁸ See *id.* at 6572.

⁵⁹ See *WWOR-TV*, 6 FCC Rcd at 6572 (emphasis added).

⁶⁰ See *id.* at 6572 (emphasis added).

⁶¹ See *MSV 2006*, 21 FCC Rcd at 10215.

defect.⁶² That position is untenable, particularly in view of the Commission's express recognition that it in fact was departing from established precedent in the *Verizon-RCC Order* because of Verizon Wireless's supposed but unexplained "special circumstances."⁶³

The *MSV 2008* decision similarly does not address or endorse citizenship presumptions from stockholder addresses. In fact, the only evidence that the Commission might possibly have considered the reliance on mailing addresses is the vague statement that "we are concerned about the quality of information made available to the Commission with respect to the foreign ownership of TerreStar, with the exception of the Harbinger Funds for which we have more complete information."⁶⁴ In support of this statement, the Commission cites a January 25, 2008 letter filed by MSV that does not discuss the methodology used to calculate TerreStar's foreign ownership. Thus, the Commission's comment about "the quality of information" may reflect the age of the data (one year old at the time of the decision), the lack of detail concerning the countries where shareholders were located (in contrast to the data submitted by the Harbinger Funds), or any other concern not stated in the order. Furthermore, based on these nebulous concerns about data quality, the Commission declared that it would consider all future investment by TerreStar as non-WTO until the applicants could provide "information to demonstrate that TerreStar's shareholdings in SkyTerra are properly ascribed to the United States

⁶² See *Shaw's Supermarkets, Inc. v. NLRB*, 884 F.2d 34, 37 (1st Cir. 1989) (explaining that an agency "may not depart sub silentio, from its usual rules of decision to reach a different, unexplained result in a single case." (citing *NLRB v. Int'l Union of Operating Engineers, Local 925*, 460 F.2d 589, 604 (5th Cir. 1972))); *Comm. for Cmty. Access v. FCC*, 737 F.2d 74, 80 (D.C. Cir. 1984) ("[A]n agency cannot silently change its policies.").

⁶³ See *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation*, WT Docket No. 07-208, Memorandum Order and Declaratory Ruling, 23 FCC Rcd 12463, 12525 (rel. Aug. 1, 2008), *reconsideration pending* [hereinafter "*Verizon-RCC Order*"].

⁶⁴ See *MSV 2008*, 23 FCC Rcd at 4461-4462.

or other WTO Member countries.”⁶⁵ Thus, the *MSV 2008* decision is hardly an endorsement of the methodology used to calculate TerreStar’s foreign ownership, however the Commission may have understood it.

Furthermore, the very fact that the Commission expressed concern about the quality of TerreStar’s foreign ownership data reveals that Verizon Wireless’s reliance on addresses of record for first-level beneficial owners does not meet the Commission’s requirements. While Verizon Wireless relies on mailing addresses for 100% of its ownership calculation, mailing addresses were used in the *MSV 2008* decision to determine the ownership of only 24.5% of MSV’s equity and none of its voting rights.⁶⁶ TerreStar itself was three levels up the ownership chain, and yet the Commission still scrutinized the accuracy of its citizenship data instead of relying on TerreStar’s “address of record” (or the address of one of the corporations lower in the ownership chain). Under the Commission’s special rule for Verizon Wireless, MSV’s U.S. address could have established MSV as wholly U.S.-owned and U.S.-controlled, and TerreStar’s foreign ownership would have been ignored entirely.

Finally, the *MSV 2008* decision does not indicate in any way that the Commission intended to alter in any respect its express decision in *América Móvil* to reject the use of

⁶⁵ *See id.*

⁶⁶ Petitioner derives this 24.5% by multiplying the 59% of TerreStar not owned by the Harbinger Funds, by wholly-owned Motient Venture Holdings’ 41.48% equity interest in Skyterra, by Skyterra’s 99.29% equity interest in MSV LP. Indeed, because MSV reported that 4.5% of this 24.5% was non-WTO, MSV used shareholder addresses only to show the U.S. or WTO status of 20% of its equity ownership. *See* Letter from Tom W. Davidson, Esq., Counsel for SkyTerra Communications, Inc. and Bruce Jacobs, Esq., Counsel for Mobile Satellite Ventures Subsidiary LLC to Ms. Marlene H. Dortch, Esq., Secretary, Federal Communications Commission, dated Oct. 5, 2007, at Attachment 7(b) (reporting 10.8% non-WTO ownership in TerreStar); Letter from Tom W. Davidson & Karen Milne, Counsel for SkyTerra Communications, Inc. and Bruce Jacobs & Clifford M. Harrington, Counsel for Mobile Satellite Venture Subsidiary LLC to Ms. Marlene H. Dortch, Esq., Secretary, Federal Communications Commission, filed January 25, 2008, at 2 n.2 (stating that the data in the October 5, 2007 letter did not include the Harbinger Funds’ interest in TerreStar).

shareholder address information as an acceptable means to show stockholder citizenship. To the contrary, the *MSV 2008* decision cites *América Móvil* with approval, which refutes any inference that the Commission intended to depart from that decision.⁶⁷ In short, presumption of citizenship from stockholder addresses of any sort is an approach that the Commission precedent expressly, definitively, and consistently has rejected for everyone but Verizon Wireless.

2. The Commission's Failure to Identify the Facts and Circumstances Justifying Reliance on Shareholder Addresses Is Fatal to the *Verizon-Alltel Order's* Ability to Withstand Judicial Review.

Even if any of the above decisions actually constituted precedent for permitting reliance on mailing addresses "on a fact-specific, case-by-case basis," the Commission completely failed to describe any facts and circumstances that justified allowing Verizon Wireless to rely on shareholder addresses in this particular case. By failing to do so, the Commission severely endangered the ability of the *Verizon-Alltel Order* to withstand a challenge under the arbitrary and capricious standard.

An agency may "proceed case by case or, more accurately, subregulation by subregulation, but it must be possible for the regulated class to perceive the principles which are guiding agency action."⁶⁸ Therefore, the Commission may use adjudication to evolve a definition of "reasonable methods to insure compliance with section 310(b),"⁶⁹ but its decisions must converge into a coherent body of law rather than diverge into a miscellaneous assortment of completely unrelated decisions.⁷⁰ Thus, it is not enough for the Commission to say, as it did in the *Verizon-Alltel Order*, that it has allowed applicants to rely on shareholder mailing addresses

⁶⁷ See *MSV 2008*, 23 FCC Rcd at 4443, 4462.

⁶⁸ See *Pearson v. Shalala*, 164 F.3d 650, 661 (D.C. Cir. 1999).

⁶⁹ See *Verizon-Alltel Order*, 23 FCC Rcd 17544-55 (quoting *WWOR-TV*, 6 FCC Rcd at 6572).

“on a fact-specific, case-by-case basis.”⁷¹ Regulated parties must be able to “measure the scope of the *ratio decidendi*, so as to predict how future cases will be decided, and therefore how behavior should be shaped. For [the agency] to utter the words ‘unique facts and circumstances’ and ‘equity’ . . . as a wand waived over an undifferentiated porridge of facts, leaves regulated parties and a reviewing court completely in the dark”⁷²

Indeed, judicial review is impossible without some explanation of an agency’s decision to treat apparently similar cases differently. “A reviewing court must be able to discern in the Commission’s actions the policy it is now pursuing, so that it may complete the task of judicial review – in this regard, to determine whether the Commission’s policies are consistent with its mandate from Congress.”⁷³ When no explanation is provided, “[t]he court really has no way of knowing if the rationale it discerns is in fact that of the agency, or one of the court’s own devise. . . . Yet only the former can provide a legitimate basis for sustaining agency action.”⁷⁴ Consequently, courts will remand agency decisions when they cannot determine the basis for the agency’s action.

The Commission’s order and the record in this proceeding are devoid of any support for the existence of circumstances warranting a different and more liberal interpretation of Section 310(b) for Verizon Wireless than for other licensees and applicants that the Commission

⁷⁰ *Commc’ns Investment Corp. v. FCC*, 641 F.2d 954, 976 (D.C. Cir. 1981) (“Distinguishing cases on the basis of principled differentiations is one thing; consciously setting out to ‘confine each case to its own facts,’ another—one which would virtually eliminate all precedent.”).

⁷¹ See *Verizon-Alltel Order*, 23 FCC Rcd at 17544-45.

⁷² See *Philadelphia Gas Works*, 989 F.2d 1246, 1251 (D.C. Cir. 1993).

⁷³ See *Atchison, Topeka Santa Fe Railway Corp. v. Wichita Bd. of Trade*, 412 U.S. at 806.

⁷⁴ *LeMoyne-Owen College v. NLRB*, 357 F.3d 55, 61 (D.C. Cir. 2004); See also *Bush-Quayle ’92 Primary Comm. v. FEC*, 104 F.3d 448, 454 (D.C. Cir. 1997) (“Without adequate elucidation, this court has no way of ascertaining whether cases are indeed distinguishable, whether the Commission has a principled reason for distinguishing them, or whether the Commission is refusing to treat like cases alike.”).

regulates.⁷⁵ The *Verizon-Alltel Order* does not discuss what facts and circumstances might justify the use of shareholder addresses, as opposed to previous cases such as *América Móvil* (rejecting the use of shareholder addresses) and *WWOR-TV* (stating that shareholder addresses are not a reasonable means of assessing foreign ownership). Because the Commission has no justification for applying such an extraordinarily inequitable policy, which amounts to patent discrimination in favor of Verizon Wireless and against its competitors, the Commission's approval of Verizon Wireless's 310(b) showing in the *Verizon-Alltel Order* cannot withstand judicial review. And, in the absence of an adequate showing that Verizon Wireless has met the requirements of Section 310(b), the Commission cannot conclude that Verizon Wireless has any valid licenses to transfer.

IV. Conclusion

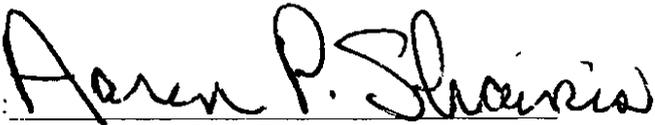
For all these reasons, the Commission should deny the above-captioned applications until Verizon Wireless first conducts a divestiture process that provides appropriate, meaningful

⁷⁵ As CAPCC pointed out in its Petition to Deny at pages 29-30 in the Verizon-RCC proceeding, although the Commission states in the *Verizon-RCC Order* that it permitted Verizon Wireless to make a conclusive presumption of stockholder citizenship based on stockholder addresses alone because of supposed "special circumstances," there is no evidence in the decision or the record for the existence of such "special circumstances," other than Verizon Wireless' bare assertion that a survey would be "burdensome." The sample size required for a statistically valid sample does not vary linearly with the size of the population to be sampled, however, so the raw number of shares outstanding cannot justify special treatment for Verizon Wireless. Verizon Wireless's need for a rapid decision also is irrelevant. Verizon Wireless had the time and resources to conduct a proper survey, so the timing was entirely in Verizon Wireless's control.

consideration for potential SDB buyers of these assets and second, demonstrates actual compliance with Section 310(b)(4) of the Communications Act.

Respectfully submitted,

**CHATHAM AVALON PARK
COMMUNITY COUNCIL**

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July 20, 2009

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)	
)	File Nos. 0003840313, <i>et al.</i> ,
For Consent To Assign or Transfer Control of)	ITC-ASG-20090552-00244, <i>et al.</i>
Licenses and Authorizations, and Modify a)	File No. 0003487528
Spectrum Leasing Arrangement)	
)	

To: The Secretary
Office of the Secretary
Federal Communications Commission

**AFFIDAVIT OF KEITH O. TATE,
PRESIDENT
CHATHAM AVALON PARK COMMUNITY COUNCIL**

Keith O. Tate hereby submits this declaration, pursuant to Section 1.16 of the Commission's rules, 47 C.F.R. § 1.16 with the understanding that this declaration will be submitted to the Federal Communications Commission (the "Commission") in connection with a petition to deny the applications of Verizon Wireless and AT&T, Inc., for Commission consent to the merger of Verizon Wireless with ALLTEL Wireless and its affiliates.

1. I am the President of Chatham Avalon Park Community Council ("CAPCC"). CAPCC is a broad-based grass-roots community membership organization founded in 1955 in Chicago, Illinois, to promote and protect the well-being of Chicago's Chatham Park Avalon Community and the civic growth of Chicago as a whole.

2. Since its founding, CAPCC has been in the forefront of major civic actions and other vital issues in Chicago. CAPCC and its representatives regularly appear before various departments and agencies of Chicago's government to address issues critical to maintaining civic life, promoting effective education, and providing essential services and security to Chicago residents, and promoting social justice and civic betterment. CAPCC joins regularly with other organizations representing Chicago's African-American Community to encourage citizen participation in local political action, and seeks to maintain the reputation of the Chatham Avalon Park Community for beauty, safety, civic action, and excellence. CAPCC sponsors and works

through a network of geographically-defined block clubs covering the whole of the Chatham Avalon Park Community.

3. CAPCC favors economic development and business activity. It believes, however, that increased consolidation of the providers of telecommunications providers, by reducing competition and eliminating smaller and mid-size service providers, has had and will have a deleterious effect upon its members. Members of CAPCC reside in areas in which the combined Verizon Wireless-ALLTEL entity and AT&T have commanding presences.

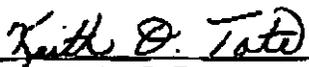
4. The absence of an adequate competitive spur from years of consolidation, CAPCC believes, causes telecommunications service providers to have less interest in the unique needs and the welfare of the communities they serve and less involvement with the people who live in them. For example, in the Chatham Park Avalon Community, which is served by the Verizon Wireless-ALLTEL combined entity and AT&T, neither Verizon Wireless-ALLTEL nor AT&T have had significant presence in terms of customer service centers or storefront operations. They do not have employees in the community, nor do they deal with community businesses in obtaining services for their own business. Because of this lack of involvement and understanding, service to the community suffers. Accordingly, CAPCC opposed the Verizon Wireless-ALLTEL merger unless the Commission imposes conditions its merger consent to require appropriate divestitures and to enhance competition and diversity of ownership in telecommunications services for the benefit of underserved communities such as the Chatham Avalon Park Community and other similarly situated communities in the greater Chicago area and in the proposed Verizon-ALLTEL service area as a whole. The Commission granted consent for the Verizon-ALLTEL merger notwithstanding the CAPCC Petition, and a petition for reconsideration CAPCC is now pending. Ignoring the Commission's exhortation to make properties required to be divested available for purchase by new entrants and socially disadvantaged businesses, Verizon Wireless now seeks authority to transfer those licenses to the second-largest wireless carrier in the United States, a move that CAPCC believes exacerbates the anticompetitive effects of the Verizon-ALLTEL merger and allows Verizon Wireless to negate the Commission's ability to give meaningful relief in response to CAPCC's pending petition or reconsideration.

5. It is CAPCC's understanding (a) that Capital Hill personnel were told that Verizon Wireless could not give special consideration to socially disadvantaged businesses in the divestiture process because it was conducting a pure auction; (b) that Verizon Wireless suggested in communications with Capitol Hill that it was compelled to conduct an auction, when the Commission imposed no such requirement; and (c) that socially disadvantaged businesses seeking to purchase divestiture assets were informed that, to participate in the sale, they would be required to have made full arrangements for financing.

6. In light of its interest in economic development and business activity, CAPCC also is concerned that larger entities have access to sources of capital that are unavailable to smaller businesses and socially disadvantaged businesses. The ability of a

company like Verizon Wireless to obtain authorization for its foreign investment without meeting the same requirements that would be applicable to a smaller business or a socially disadvantaged business exacerbates the disadvantages in obtaining capital that already exist in the marketplace. Allowing Verizon Wireless to resell licenses that, for the reasons set forth in CAPCC's petition for reconsideration, it may not validly hold likewise permits Verizon Wireless to deny the Commission the ability to grant meaningful relief in response to CAPCC's petition for reconsideration. Consequently, it is important to CAPCC that the Commission ensure that there are no short cuts available to larger companies that are not also available to socially disadvantaged businesses.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 17 day of July, 2009.



Keith O. Tate

CERTIFICATE OF SERVICE

I, Aaron Shainis, do hereby certify that on this 10th day of August, 2009, copies of the foregoing Petition to Deny were served as follows:

To Federal Communications Commission as follows (via hand delivery):	
Erin McGrath Mobility Division Wireless Telecommunications Bureau 445 12th Street, S.W. Washington, D.C. 20554	Stacy Ferraro Spectrum and Competition Policy Division Wireless Telecommunications Bureau 445 12th Street, S.W. Washington, D.C. 20554
Linda Ray Broadband Division Wireless Telecommunications Bureau 445 12th Street, S.W. Washington, D.C. 20554	David Krech Policy Division International Bureau 445 12th Street, S.W. Washington, D.C. 20554
Jim Bird Office of General Counsel 445 12th Street, S.W. Washington, D.C. 20554	Neil Dellar Office of General Counsel 445 12th Street, S.W. Washington, D.C. 20554
Best Copy and Printing, Inc. 445 12th Street, S.W. Washington, D.C. 20554	
To Office of the Chairman as follows: The Honorable Julius Genachowski 445 12th Street, S.W. Washington, D.C. 20554	To the Office of the Chairman as follows: Bruce Gottlieb 445 12th Street, S.W. Washington, D.C. 20554
To the Office of Commissioner Michael Copps as follows: The Honorable Michael Copps 445 12th Street, S.W. Washington, D.C. 20554	To the Office of Commissioner Michael Copps as follows: Scott Deutchman 445 12th Street, S.W. Washington, D.C. 20554
To the Office of Commissioner Robert McDowell as follows: The Honorable Robert McDowell 445 12th Street, S.W. Washington, D.C. 20554	To the Office of Commissioner Robert McDowell as follows: Angela Giancarlo 445 12th Street, S.W. Washington, D.C. 20554

<p>To the Office of Commissioner Mignon Clyburn as follows:</p> <p>The Honorable Mignon Clyburn 445 12th Street, S.W. Washington, D.C. 20554</p>	<p>To the Office of Commissioner Meredith Attwell Baker as follows:</p> <p>The Honorable Meredith Attwell Baker 445 12th Street, S.W. Washington, D.C. 20554</p>
<p>To the following via U.S. mail, first-class, postage prepaid</p>	
<p>To Verizon Wireless as follows:</p> <p>Nancy Victory Wiley Rein LLP 1776 K Street, N.W. Washington, D.C. 20006</p>	<p>To Atlantic Tele-Network, Inc. as follows:</p> <p>Jonathan V Cohen Wilkinson Barker Knauer, LLP 2300 N Street, NW, Suite 700 Washington, DC 20037</p>
	<p style="text-align: center;">  <hr/> Signed: Aaron Shainis August 10, 2009 <hr/> Date </p>