

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Applications of Atlantic Tele-Network, Inc. and)	WT Docket No. 09-119
Cellco Partnership d/b/a Verizon Wireless)	DA 09-1515
)	
for Consent to Assign or Transfer Control of)	File Nos. 0003858521, <i>et al.</i>
Commission Licenses and Authorizations)	ITC-ASG-20090616-00286, <i>et al.</i>

**JOINT OPPOSITION OF
ATLANTIC TELE-NETWORK, INC. AND VERIZON WIRELESS
TO PETITIONS TO DENY**

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SUMMARY

The expeditious approval of the proposed acquisition of licenses and authorizations in 26 cellular market areas (“CMAs”) by Atlantic Tele-Network, Inc. (“ATN”) will yield public interest benefits to consumers in those markets. None of the facts demonstrating this conclusion have been meaningfully challenged by the few opponents to this transaction. Further, the proposed transaction will help to satisfy the divestiture obligations imposed on Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) as a condition of its merger with ALLTEL Corporation (“ALLTEL”), while preserving competition and introducing a new marketplace participant.

As a result of this transaction, a new competitor will assume the former ALLTEL position in these CMAs, providing consumers in these markets with a fresh choice in wireless service providers. ATN has the legal qualifications to acquire the licenses and no facts have been asserted to rebut the fact that ATN has sufficient financial resources and experience in the industry to ensure the public interest benefits of the transaction are realized.

The assertions of the few opponents to this transaction are without merit and/or are irrelevant to this proceeding. The Commission should reject outright allegations that ATN is unable to compete effectively in the subject CMAs, as these claims are purely speculative and are premised on egregious misstatements regarding ATN’s existing operations. These claims appear to have been made in order to gain leverage in a private contractual dispute currently pending in federal court, a dispute which opponents have asserted constitutes grounds to deny the grant, despite the Commission’s long-standing and well-settled policy of refusing to consider such issues in license transfer proceedings. The Commission need not and should not entertain these arguments in the context of this proceeding.

Other opponents argue that the Commission should deny the applications based on alleged infirmities in the divestiture process, claims that are equally without merit. Petitioners' arguments that Verizon Wireless should have divested the properties to other buyers (specifically, minority-owned or socially disadvantaged entities) and that the divestiture process was improperly conducted and tainted by a conflict of interest are unfounded and are not relevant here. In reviewing a license transfer, the Commission does not consider alternative buyers and does not examine the process by which the buyer of licenses is determined. In any event, contrary to the petitioners' claims, Verizon Wireless conducted an open and inclusive bidding process, specifically encouraged minority and socially disadvantaged businesses to participate in that process, and made efforts to involve such entities at each stage, just as the Commission encouraged it to do in the *Verizon Wireless-ALLTEL Merger Order*. Further, the facts clearly demonstrate that Verizon Wireless and its advisor, Morgan Stanley, conducted a fair bidding process free of conflicts of interest.

Because the proposed transaction will yield clear public interest benefits and because opponents have offered no credible evidence to challenge these benefits, prompt grant of the transaction without conditions is warranted.

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I. INTRODUCTION

As Atlantic Tele-Network, Inc. (“ATN”) and Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless,” and together with ATN, the “Applicants”) demonstrated in the above-captioned applications, the proposed transaction will foster competition and serve the public interest. Nothing in the petitions to deny creates any doubt as to ATN’s basic qualifications to acquire control of licenses and authorizations in these markets, nor do the petitions refute the public interest benefits, most notably the introduction of a new competitor, that the transaction will produce.¹ As shown below, the petitioners’ unfounded arguments offer no valid basis for denial of this transaction, nor do they raise any material question of fact requiring further

¹ Petitions to deny the above-captioned applications were filed on August 10, 2009 by The National Association of Black Owned Broadcasters, Inc. (“NABOB”), by Telephone USA Investments, Inc. (“Telephone USA”), by Verizon Wireless’ partners in Georgia RSA #8 Partnership: Bulloch Cellular, Inc.; Pineland Cellular, Inc.; Planters Rural Cellular, Inc.; and Plant Cellular RSA 8, Inc. (collectively, the “GA-8 Partners”), and by Chatham Avalon Park Community Council (“CAPCC”), which merely incorporates by reference its Petition to Deny filed July 20, 2009 in WT Docket No. 09-104.

Commission investigation. Indeed, as demonstrated in the above-captioned applications, the proposed transaction would serve the public interest and is fully consistent with the FCC's order consenting to the merger of Verizon Wireless and ALLTEL Corporation ("ALLTEL"),² as well as with the Final Judgment resolving the objections of the U.S. Department of Justice ("DOJ") to that merger.³ The petitions therefore should be denied in their entirety.

II. THE PROPOSED TRANSACTION WILL SERVE THE PUBLIC INTEREST.

As made plain in the applications, the proposed transaction will cause no harm to competition and in fact will result in public interest benefits. The petitions do not refute these facts. Despite an attempt by one petitioner – who has brought a breach of contract suit challenging the transaction – to attack the qualifications of ATN, the transferee is clearly legally qualified to acquire the licenses and authorizations at issue here, a fact confirmed by the Commission on several occasions.⁴ Further, no facts have been asserted to rebut that ATN has sufficient financial resources and experience in the industry to ensure the public interest benefits of the transaction are realized.

² *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008) ("*Verizon Wireless-ALLTEL Merger Order*").

³ Final Judgment, *United States, et al. v. Verizon Communications Inc. and ALLTEL Corp.*, Civil No. 08-1978 (D.D.C. filed Apr. 24, 2009) ("*Final Judgment*"). See also Modified Final Judgment, *United States v. Bell Atlantic Corp. et al.*, Civil No. 99-01119 (D.D.C. filed Dec. 30, 2008).

⁴ ATN's basic qualifications to control the licenses and authorizations at issue here are well established and have been recently reaffirmed by the Commission. See, e.g., *FCC Public Notice*, Report No. 4670 (WTB rel. Jan. 14, 2009) (consenting to the assignment of cellular and point-to-point microwave licenses to ATN subsidiary Commnet of Nevada, LLC); *FCC Public Notice*, DA 08-2572 (WTB rel. Nov. 26, 2008) (granting 700 MHz licenses to ATN subsidiary SAL Spectrum, LLC); *FCC Public Notice*, Report No. 2258 (WTB rel. Sept. 14, 2005) (consenting to the transfer of control of the Commnet subsidiaries to ATN).

A. The Transaction Will Bring a New Entrant into the Retail Wireless Market and Produce Other Public Interest Benefits.

Verizon Wireless and ATN have demonstrated in the above-captioned applications that the proposed transaction will yield public interest benefits and promote competition, and nothing in the petitions undermines this showing. As stated in the applications, the proposed transaction will enable ATN to establish a fresh competitive presence in 26 cellular market areas and to execute on its long-held plan to add a domestic retail wireless service offering to its existing international retail and domestic wholesale operations.⁵ Further, the transaction advances government policy goals by effecting the divestiture of assets required by the Commission in the *Verizon Wireless-ALLTEL Merger Order* and the DOJ in the Final Judgment.

As an initial matter, upon the Commission's approval of the applications, ATN's entry in the markets at issue will preserve competition and help achieve the Commission's long-held policy of encouraging new facilities-based competition. ATN currently holds no spectrum nor provides wireless service in any of the CMAs to be acquired. ATN's acquisition of the Verizon Wireless properties will allow it to step into the shoes of the former ALLTEL as a competitor in these markets. ATN will thus be a new, eager market entrant who will contribute to facilities-based competition in the subject CMAs. The transaction thus plainly causes no competitive harm and, by providing an opportunity for a new market entrant, also advances the public

⁵ See ATN News Release (Jun. 9, 2009), *avail. at* http://www.atni.com/pr_web.php?nd=090609&pr=01 (quoting Michael Prior, ATN's President and Chief Executive Officer, as saying that the transaction with Verizon Wireless "accomplishes what we have been patiently seeking over the past few years"). All factual statements herein pertaining to ATN are supported by the declaration of Michael T. Prior, President and Chief Executive Officer of Atlantic Tele-Network, Inc., attached as Exhibit A hereto.

interest. Indeed, ATN's corporate leadership and quality of service are well recognized, confirming its ability to address the needs of consumers in the markets at issue.⁶

As the Commission has recognized previously, rural markets like the CMAs at issue have unique challenges.⁷ ATN will be able to utilize its long experience successfully operating rural wireless telecommunications networks to provide locally-focused service to subscribers in the divested markets in competition with the national carriers. Further, ATN's strong financial position will enable it to bring to bear all the resources needed to maintain and improve upon the services currently being offered to subscribers in these markets. ATN has been focused on its transition planning to ensure that it will be able to successfully manage and operate the to-be-divested networks from day one and provide a smooth transition for existing customers.⁸ As discussed more fully below, no petitioner has meaningfully refuted these facts.

The proposed transaction also will advance the public interest by partially fulfilling the divestiture obligations imposed by the Commission in the *Verizon Wireless-ALLTEL Merger*

⁶ ATN has been singled out for special recognition numerous times. Its CEO was named Entrepreneur of the Year for the New England Region for 2008 by Ernst & Young and "One of the Best CEOs in America" by DeMarche and Associates. Also, in both 2007 and 2008, the company was recognized as one of the 200 Best Small Companies in America by Forbes Magazine. It also was named by Fortune Magazine as one of the Fastest Growing Public Companies in both 2007 and as one of the 100 Fastest Growing Companies in 2008 and 2009, and by the Boston Globe in 2007, 2008 and 2009 as one of the region's Top 100 Public Companies. ATN's Bermuda operation won a 2007 award for Best Cellular Phone Provider for the Younger Set/Young Professionals from Bermudian Business magazine. In a market research study conducted in Bermuda, 100 percent of the customers of ATN's Cellular One service there said that they would recommend their provider to their friends. Corporate Cellular Survey, April 2008, prepared by research.bm. These accolades confirm ATN's qualifications and capabilities.

⁷ *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services*, Notice of Proposed Rulemaking, 18 FCC 20802, 20806 ¶ 4 (2002) ("We recognize that the inherent economic challenges of providing telecommunications services in sparsely populated, expansive rural areas are of significant importance to any carrier that serves or is considering serving these areas.").

⁸ To provide added assurance of a smooth transition, Verizon Wireless will provide services to ATN under a one-year transition services agreement called for in the *Final Judgment* after the proposed transaction is consummated. See *Final Judgment* at Section IV.J.

Order.⁹ In addition, the DOJ is considering the proposed divestiture under the consent decrees into which Verizon Communications Inc. (“Verizon”) entered with the DOJ and various state attorneys general regarding its merger with ALLTEL, which entitle the DOJ to determine whether ATN has “the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of mobile wireless telecommunications services.”¹⁰ ATN has provided detailed information to the DOJ concerning its plans to offer vigorous competition to Verizon Wireless and other carriers, and has every reason to expect that the DOJ will allow the proposed divestiture to proceed. There is simply nothing in the petitions that would lead the FCC to reach a contrary conclusion.

B. Claims that the Proposed Transaction Would Disserve the Public Interest Are Based on Mere Speculation, Uninformed Assumptions and Outright Falsehoods.

In their petition to deny, the GA-8 Partners ask the Commission to find that ATN is unqualified to acquire the divestiture markets on the basis of speculation based on misinterpretation of ATN’s operating performance in other markets.¹¹ The Commission routinely and properly refuses to engage in such speculative exercises,¹² and it should follow

⁹ *Verizon Wireless-ALLTEL Merger Order*, 23 FCC Rcd at 17515-17520 ¶¶ 157-170.

¹⁰ *Final Judgment* at Section IV.H.1. *See also* Modified Final Judgment, *United States v. Bell Atlantic Corp. et al.*, Civil No. 99-01119 (D.D.C. filed Dec. 30, 2008).

¹¹ The GA-8 Partners claim that the proposed transaction would disserve the public interest because ATN “is incapable of competing effectively in a [] domestic market” that is larger than those in which it currently provides retail wireless services. GA-8 Partners Petition at 6.

¹² *See, e.g., Verizon Wireless-ALLTEL Merger Order*, 23 FCC Rcd at 17468 ¶ 39 (finding that allegations “based solely on speculation and unfounded inferences” fall short of a substantial and material question of fact that would warrant a designation of the applications for a hearing); *Verizon Communications, Inc., Transferor and America Movil, S.A. de C.V., Transferee Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI)*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195, 6212-6213 ¶ 40, n. 115 (2007) (stating that the Commission has “consistently rejected” arguments “based wholly upon speculation that a party will not comply with its obligations in the future” and other “purely speculative” claims and citing several cases in support of its policy not to

that course here. Even if the Commission were to examine the facts regarding ATN's operating record, however, it would find firm confirmation of ATN's qualifications to own the to-be-divested assets and to compete effectively in the retail wireless marketplace in the United States. The GA-8 Partners' arguments reveal a fundamental misunderstanding of the markets in which ATN currently operates (both inside and outside the United States), rely on inaccurate conclusions drawn from random pieces of market research data, and evince a lack of exacting investigation into the publicly available documentation regarding ATN's retail wireless operations in other countries. Their petition does not call into question either ATN's basic qualifications or the public interest benefits of the proposed transaction, and the Commission should dismiss it out of hand.

ATN has a long track record of investing heavily in its acquired networks in order to expand the scope and improve the services of the acquired businesses. Over the past 20 years, ATN has invested approximately \$300 million in its Guyana telecommunications networks, and in 2008, during the worst recession in decades, ATN made over \$47 million of network investments, including the installation of a 3G wireless network to serve its retail customers in Bermuda.¹³ ATN's strong financial position contributed to its selection by Verizon Wireless as

engage in speculation); *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5737 ¶ 148 (2006) (declining to accept opponents' allegations that the proposed merger would result in coordinated effects on the basis that commenters' "assumption" was "speculative and not supported by the record"); *Pacific Telesis Group Transferor, and SBC Communications, Inc. Transferee For Consent to Transfer Control of Pacific Telesis Group and its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 2624, ¶ 31 (1997) (finding speculation insufficient to show that the transfer may result in a substantial reduction in competition or tendency towards monopoly).

¹³ See ATN Annual Report for the Year Ending December 31, 2008, SEC Form 10-K (filed Mar. 16, 2009), at 5, F-41 (Note 15 to Consolidated Financial Statements - Capital Expenditures) ("*ATN Annual Report*"). ATN's investment history shows that the GA-8 Partners' fears that ATN harbors "an intention not to support a robust retail experience" and "has no real financial incentive to invest in the necessary marketing, advertising and work required to operate a successful retail business in the Georgia Cluster" have no basis in fact. GA-8 Partners Petition at 12.

the acquirer for these assets,¹⁴ and its strong balance sheet will enable it to access capital to make required investments more easily than others might.

ATN has for several years sought to establish a retail wireless presence in the United States and intends to “hit the ground running” when the transaction is consummated.¹⁵ ATN has publicly announced that it “will be adding over 450 Alltel employees who have experience working for a top-notch, customer-focused operator and we expect the number of employees focused on this business to increase substantially.”¹⁶ To that end, ATN has devoted substantial effort and resources to putting in place a senior management team comprised of wireless industry veterans to lead the new entity that will run ATN’s retail wireless business in the divested markets.¹⁷

The GA-8 Partners claim that, because ATN has not heretofore managed a retail wireless operation over a geographic area of the size involved in the proposed transaction, its ability to compete is “highly suspect.”¹⁸ Setting aside the fact that Commission decisions must be based on evidence and not on the “suspicions” of interested parties, this assertion is baseless and absurd. Indeed, under the petitioner’s theory, the Commission could never approve a new entrant because such an entity would by definition have “no retail experience.” In any event,

¹⁴ See n. 58 *infra*.

¹⁵ Indeed, ATN has announced that the pricing plans and differentiated service offerings currently provided to ALLTEL’s customers will remain in place under ATN’s management. See ATN News Release, Statement by Michael T. Prior, Chief Executive Officer (rel. June 30, 2009), available at http://www.atni.com/pr_web.php?nd=090630&pr=01.

¹⁶ See ATN News Release, Statement by Michael T. Prior, Chief Executive Officer (rel. June 30, 2009), available at http://www.atni.com/pr_web.php?nd=090630&pr=01.

¹⁷ Indeed, it is worth noting that ATN’s Commnet Wireless subsidiary has already entered the U.S. retail market through its acquisition of a system in Nevada earlier this year, and that the FCC found that acquisition to be in the public interest. See *FCC Public Notice*, Report No. 4670 (WTB rel. Jan. 14, 2009) (consenting to the assignment of cellular and point-to-point microwave licenses to ATN subsidiary Commnet of Nevada, LLC).

¹⁸ GA-8 Partners Petition at 8-9.

contrary to the GA-8 Partners' claims, the expertise that ATN's subsidiary Commnet Wireless has developed in managing and operating facilities-based wireless networks in the United States is a valid indicator of ATN's future prospects for effectively managing retail wireless operations. Competent network operations are among the most important factors in maintaining a competitive service offering, and Commnet Wireless has licenses and facilities in 14 states with coverage of over 107,000 square miles with its GSM network and nearly 48,000 square miles with its CDMA network. These areas dwarf the geography encompassed by the facilities ATN proposes to acquire from Verizon Wireless.

None of the rationales offered by the GA-8 Partners forms a basis for the Commission to deny the proposed transaction. Viewed in the most favorable light, the GA-8 Partners' claims are built on ignorance, speculation and faulty assumptions. At worst, they are based on outright falsehoods.¹⁹ The unsupportable claims made by the GA-8 Partners do not refute the

¹⁹ Examination of just a few examples of the GA-8 Partners' deficient fact-checking puts the lie to the premise of their petition to deny – that ATN is unfit to acquire the operations at issue here:

- (1) The GA-8 Partners state that “[u]ntil 2004, ATN had the luxury of being a government-protected mobile service monopoly in Guyana and was the only retail provider of mobile communications in the country.” GA-8 Partners Petition at 6. This statement is simply and demonstrably false. ATN subsidiary Guyana Telephone and Telegraph Company, Limited (“GT&T”) offers wireless service in Guyana pursuant to a non-exclusive license granted in 1990. *See Agreement Between the Government of the Co-Operative Republic of Guyana and Atlantic Tele-Network, Inc.* (dated June 18, 1990), available at http://www.sec.gov/Archives/edgar/data/879585/000110465906035157/a06-11928_1ex10d1.htm, at Section 6.3. For many years prior to 2004, GT&T competed against two other carriers in Guyana: Caribbean Telecommunications, Ltd. and Cel*Star Guyana. Both decided to exit the market. These facts about wireless competition in Guyana have been publicly reported by ATN for over a decade.
- (2) The GA-8 Partners base their prediction that ATN will be unable to effectively compete in the United States on estimated market share percentages in Guyana. GA-8 Partners Petition at 6-7. Accurate estimates of market share in Guyana, however, are elusive due to the fact that pre-paid service is the predominant part of the business in Guyana, and many (if not most) customers buy phones from multiple carriers and engage in “least cost routing” on the fly – that is, they use whichever phone offers the cheapest per minute rate at any given part of the day. *See ATN Annual Report at 6* (“As of December 31, 2008, over 97% of [ATN’s] wireless subscribers were on pre-paid plans. . . . [W]ith a largely pre-paid subscriber base it is difficult to determine how many of our subscribers are also subscribers to competing services.”).

demonstrated fact that the proposed transaction would serve the public interest. One can only assume that the GA-8 Partners are simply using this proceeding to engage in a commercial character assassination of ATN in order to gain leverage in their recently-filed lawsuit against Verizon Wireless, which is discussed immediately below.

III. THE ARGUMENTS RAISED BY PETITIONERS ARE ENTIRELY LACKING IN MERIT.

None of the petitioners cites a single rule, case or order that provides the legal basis for the claims they make. Indeed, the Commission precedent relevant to the issues they raise is all to the contrary. In reviewing a license transfer, the Commission does not consider private contractual disputes, does not consider alternative buyers, and does not examine the process in which the buyer of licenses is determined. The petitions accordingly must all be denied.

A. The Commission Should Not Deviate From Its Well-Established Policy Not To Interject Itself Into Private Contractual Disputes.

The GA-8 Partners seek to involve the Commission in their private dispute with Verizon Wireless regarding the GA-8 Partners' respective rights and obligations under the agreement that governs the Georgia RSA #8 Partnership. The GA-8 Partners allege that Verizon Wireless has

(3) The GA-8 Partners allege that "ATN has proven to be anything but an effective competitor even against a marketplace upstart like Digicel." GA-8 Partners Petition at 7, 8. In reality, Digicel is the largest wireless operator in the Caribbean, with operations in 26 markets in the Caribbean and Central America and 6.54 million subscribers as of March 31, 2008. *See* About Digicel, <http://www.digicelgroup.com/en/about>. Characterizing Digicel as an "upstart" shows that the GA-8 Partners either have very little understanding of the Caribbean wireless market or are more interested in making self-serving accusations than in accuracy. Moreover, when Digicel entered the Guyana wireless market in 2006, it subsidized market share gains by giving away handsets, which is particularly effective, though not necessarily profitable, in a market in which pre-paid service is dominant. Digicel has a history of initiating wireless service in new markets using a entry strategy under which it "dots countries with cell towers, sometimes before rulers even grant a license, then slashes the price of mobiles on opening day to get the masses using them fast." *See* Bernard Condon, *Babble Rouser*, FORBES (Aug. 11, 2008), *available at* <http://www.forbes.com/forbes/2008/0811/072.html>. ATN's ability to maintain rough parity in the Guyana wireless market with the much-larger Digicel actually is a testament to ATN's ability to maintain an effective competitive posture against a larger competitor.

violated rights of first refusal (“ROFRs”) under the partnership agreement and have filed a civil complaint in a Georgia court (now removed to federal court) seeking both injunctive relief and damages.²⁰ At the same time, they ask the Commission, at a minimum, to hold the instant proceeding in abeyance until these claims can be adjudicated in court.²¹ This request flies in the face of long-standing Commission precedent and should be ignored.

The issues raised by the GA-8 Partners are among those the Commission traditionally and consistently has refused to consider in addressing the merits of a licensing application. The Commission has long adhered to the fundamental principle that “the purpose of the [Communications] Act is to protect the public interest rather than provide a forum for the settlement of private disputes.”²² Allegations of breach of fiduciary duty or other matters touching upon general corporate or partnership relationships are typical of the claims the Commission most often rejects, as they involve issues of commercial law in which the FCC has no special expertise and which do not raise matters germane to the agency’s authority.²³

²⁰ GA-8 Partners Petition at 13.

²¹ *Id.* at 14.

²² *PCS 2000, L.P.*, 12 FCC Rcd 1681, 1691 (1997) (quoting *United Tel. Co. of Carolinas v. FCC*, 599 F.2d 720, 732 (D.C. Cir. 1977)). *See also Regents of University System of Georgia v. Carroll*, 338 U.S. 586, 602 (1950) (stating that the Commission is not the proper forum to litigate contract disputes between licensees and others); *Listeners’ Guild v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987) (confirming “the Commission’s long-standing policy of refusing to adjudicate private contract law questions.”).

²³ *See, e.g., Verizon Wireless-ALLTEL Merger Order*, 23 FCC Rcd at 17538 (2008) (refusing to consider the question of whether the transaction would violate existing reseller agreements because it is a private contractual dispute); *Motient Corporation*, Memorandum Opinion and Order and Declaratory Ruling, 21 FCC Rcd 10198, 10209 (IB, WCB, OET 2006) (refusing to consider shareholder’s allegations of breach of fiduciary duty against transferor as “Commission proceedings are not the appropriate forum for the adjudication of shareholder disputes”); *Comsat Corporation*, Memorandum Opinion and Order, 13 FCC Rcd 2714, 2729 (1997) (finding FCC is not the proper venue for discontented shareholders to raise issues relating to corporate management practices); *Applications of PCS 2000*, 12 FCC Rcd at 1691 (refusing to adjudicate allegations of breach of fiduciary duty, monetary harm, or similar disputes involving partnership and shareholder rights); *Applications of Centel Corporation*, Memorandum Opinion and Order, 8 FCC Rcd 1829, 1831 (CCB 1993) (refusing to consider allegations of breach of partnership agreement as it amounts to a private contractual dispute).

The specific type of allegation raised by the GA-8 Partners – that the proposed transaction may violate a ROFR – has been expressly rejected by the Commission in the past.²⁴ In those cases, the Commission emphasized that claims that a transaction violates a ROFR “amount to a private contractual dispute that is outside the scope of our review.”²⁵ The agency has additionally refused to defer or delay action on assignment or transfer applications pending court litigation of contractual disputes.²⁶ Here, the GA-8 Partners’ legal claims against Verizon Wireless have been brought before a court.²⁷ Consistent with unwavering precedent, the Commission need not and should not address them in the context of this proceeding.

B. Challenges to the Divestiture Process Are Irrelevant, Unsupported and Inaccurate.

CAPCC and NABOB request that the Commission deny the applications and instead force Verizon Wireless to undertake an entirely new divestiture process pursuant to Commission-imposed requirements that, “at a minimum,” would grant unspecified “socially disadvantaged

²⁴ *Global Crossing Ltd. and GC Acquisition Limited*, Order and Authorization, 18 FCC Rcd 20301, 20343-44 (IB, WTB, WCB 2003) (refusing to consider whether the transaction would violate a ROFR in a stockholder agreement because the issue is a private contractual dispute); *Mid-Missouri Telephone Co.*, Order, 14 FCC Rcd 18613, 18616 (WTB 1999) (refusing to consider whether the proposed transfer would violate a ROFR in a limited partnership agreement because the issue is a private contractual dispute); *Pueblo MSA Limited Partnership*, Order, 13 FCC Rcd 2583, 2586 (WTB 1998) (same).

²⁵ *Pueblo MSA Limited Partnership*, 13 FCC Rcd at 2586.

²⁶ *Margaret Jackson and Ray Webb*, Memorandum Opinion and Order, 18 FCC Rcd 26403, 26404 (2003) (declining to defer action on transfer applications pending court litigation of contractual dispute); *Northwest Broadcasting, Inc. and Western Pacific, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 3289, 3294 (1997) (same); *WWC Holding Co., Inc. and RCC Minnesota, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 6589, 6598 (WTB 2007) (same); *Verestar, Inc.*, Memorandum Opinion and Order and Authorization, 19 FCC Rcd 22750, 22756 (IB, WTB 2004) (same); *Elaine Hough and Chadmoore Wireless Group, Inc.*, Order, 18 FCC Rcd 1875, 1877 (WTB 2001) (same); *Caribbean SMR, Inc.*, 16 FCC Rcd 15663, 15665 (WTB 2003) *Decatur Telecasting, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 8622, 8624 (MB 1992) (same).

²⁷ Verizon Wireless does not concede that any ROFR rights held by the GA-8 Partners have been triggered, and will address the civil action filed by the GA-8 Partners in due course and in the appropriate forum.

groups” a right of first refusal on all of the properties.²⁸ Telephone USA similarly objects to the process Verizon Wireless used to sell the divestiture assets.²⁹ These arguments lack any legal or factual basis and the related requests should be summarily rejected for the reasons detailed below.

1. The Communications Act precludes consideration of the relief requested.

CAPCC, NABOB and Telephone USA essentially complain that the applications should be denied because Verizon Wireless should have divested the properties to other buyers, preferably minority-owned or socially disadvantaged entities. The Communications Act, however, expressly forbids the Commission from considering whether a transfer of a Title III license to another buyer would better serve the public interest.³⁰ The law on this point is settled: in determining whether an application for transfer of licenses serves the public interest, the Commission may not consider whether sale to a different buyer would be preferable.³¹ CAPCC’s, NABOB’s and Telephone USA’s petitions must be denied on this basis alone.

²⁸ NABOB Petition at 2-3, 7-11; CAPCC Petition, Appendix 1 at 3-8. NABOB and CAPCC fail to demonstrate standing to be a party in this proceeding for the same reasons as Verizon Wireless and AT&T articulated in their Joint Opposition in WT Docket 09-104. Joint Opposition of AT&T Inc. and Verizon Wireless to Petitions to Deny or to Condition Consent and Reply to Comments, WT Docket No. 09-104 at n.68 (July 30, 2009).

²⁹ Telephone USA Petition at 5-8.

³⁰ 47 U.S.C. § 310(d) (“[I]n acting thereon the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.”).

³¹ See, e.g., *Applications of Craig O. McCaw & Am. Tel. & Tel. Co. for Consent to the Transfer of Control of McCaw Cellular Commc’ns, Inc. & Its Subsidiaries*, Memorandum Opinion and Order, 9 FCC Rcd 5836, 5916-17 ¶¶ 149-50 (1994) (“*McCaw/AT&T Order*”), *aff’d sub nom. SBC Commc’ns Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995) (rejecting NABOB’s argument that the FCC cannot approve an assignment application without “a demonstration from the applicants that efforts were made to sell the McCaw-controlled television stations to minority-owned companies”); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses – Adelphia Commc’ns Corp. (and Subsidiaries, Debtors-In-Possession) to Time Warner Cable Inc. (Subsidiaries)*, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8324 ¶ 285 (2006) (noting that “the Commission must examine whether the transactions before it will serve the public interest without regard to other possible transactions”); *MCI Commc’ns Corp. & S. Pac. Telecomms. Co. for Consent to Transfer Control of Qwest Commc’ns, Inc.*,

2. Verizon Wireless was not required to divest any licenses to a minority or socially disadvantaged group or to follow particular divestiture procedures.

CAPCC, NABOB and Telephone USA incorrectly assert that Verizon Wireless was obligated to follow particular procedures – apart from those specified in the *Final Judgment* – to find buyers for the properties that it was required to divest under the *Verizon Wireless-ALLTEL Merger Order*. In fact, the Commission was asked during its consideration of the Verizon Wireless/ALLTEL merger to impose conditions on the divestiture process aimed at ensuring that the properties went to minority or socially disadvantaged buyers, but it explicitly *rejected* any such conditions. Specifically, the Commission denied proposals to condition the sale of these assets on the size, ownership or business plan of the acquirer or on a right of first negotiation for minority or socially disadvantaged groups.³² CAPCC’s request that the divestiture process be redone, and to include – at a minimum – a right of first refusal for certain groups, flies in the face of the Commission’s own decision. It merely reargues a request that the Commission already rejected.

Equally invalid is CAPCC’s demand that the Commission “investigat[e] the facts and circumstances surrounding this transaction.”³³ NABOB and Telephone USA each make a similar request.³⁴ Given that there is no provision of the Act, the Commission’s rules or the *Verizon Wireless-ALLTEL Merger Order* that imposes requirements on the manner in which

Memorandum Opinion and Order, 12 FCC Rcd 7790, 7801 ¶ 29 (1997) (citing Section 310(d) and noting that “in the instant transfer proceeding, the Commission was precluded by statute from considering competing, third-party applications”).

³² *Verizon Wireless-ALLTEL Merger Order*, 23 FCC Rcd at 17518 ¶ 162 (“We decline to place any conditions on the sale of the Divestiture Assets based on (1) the size, ownership structure, or business plan of the acquirer, or (2) the size of the geographic areas that the Divestiture Areas can be sold to an acquirer.”).

³³ CAPCC Petition, Appendix 1 at 9.

³⁴ NABOB Petition at 9; Telephone USA Petition at 3, 8.

Verizon Wireless entered into transactions to sell the properties or with whom it could communicate before or during that process, there is no basis for any such investigation.

The Commission did “*encourage Verizon Wireless to consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture Assets and/or accessing spectrum, to the extent possible.*”³⁵ This statement is not a condition on the merger and, therefore, does not support Petitioners’ claims that Verizon Wireless violated the Commission’s requirements. Nevertheless, Verizon Wireless succeeded in attracting a new, rural entrant to the retail wireless business in its selection of ATN, which has a history of maintaining local management of acquired assets and has committed to do the same here. In any event, as discussed below, Verizon Wireless conducted the process in a manner consistent with the FCC’s encouragement.

3. Verizon Wireless conducted an open and inclusive sale process that gave opportunities to minority and socially disadvantaged firms.

Petitioners’ claims regarding the bidding process employed by Verizon Wireless for the divestiture assets – that it was a sham, that buyers were predetermined, that it was anything other than a fair and open bidding process – are unsupported³⁶ and belied by the facts. Moreover,

³⁵ *Verizon Wireless-ALLTEL Merger Order*, 23 FCC Rcd at 17518 ¶ 162 (emphasis added).

³⁶ NABOB and CAPCC also fail to meet the requirements of Section 309 of the Act and the Commission’s rules that petitions to deny must be supported with an affidavit from persons with personal knowledge of the specific facts alleged in the petitions. 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.939(d). For example, NABOB claims that “minority bidders were never given serious consideration as potential purchasers” and that Verizon Wireless “had Morgan Stanley conduct a bidding process that erected barriers to minority participation.” NABOB Petition at 7. Similarly, CAPCC argues that Verizon Wireless did not do enough to encourage participation in the bidding process by socially disadvantaged businesses. *See* CAPCC Petition, Appendix 1 at 3-7. Neither Petitioner, however, provides any support for its conclusory statements either by citation or declaration. The declarations appended to the NABOB and CAPCC Petitions merely affirm the truth of the alleged facts in the petitions without establishing the basis for the declarants having any “personal knowledge” upon which to base such affirmations. Instead, they rely on hearsay, such as information Verizon Wireless allegedly told “Capitol Hill personnel,”

consistent with the Commission's suggestion in the *Verizon Wireless-ALLTEL Merger Order*, Verizon Wireless specifically involved and encouraged minority and socially disadvantaged businesses to participate in the bidding process, and made efforts to include such entities at each stage.³⁷ For example, early in the process, Verizon Wireless asked the Minority Media Telecommunications Council ("MMTC") to identify minority-owned businesses that would be in a position to participate in the divestiture sale process. Subsequently, MMTC identified and submitted the names of two minority-owned entities, both of which initially participated in the sale process and one of which submitted a bid.

Even before the *Verizon Wireless-ALLTEL Merger Order* was adopted, Verizon Wireless received a number of inquiries regarding the anticipated divestiture properties due to press reports regarding Verizon Wireless' commitment to divest these properties as a result of discussions with the DOJ. Verizon Wireless and Morgan Stanley & Co. Incorporated ("Morgan Stanley"), which Verizon Wireless had hired in March 2007 as its financial advisor for its then-proposed acquisition of ALLTEL, began working on the sale of the anticipated divestiture properties in August 2008.³⁸

At the direction of Verizon Wireless, Morgan Stanley conducted an open and inclusive search for potential buyers of the properties to be divested. Morgan Stanley sent a Preliminary Overview of the Divestiture Assets and a non-disclosure agreement to a large variety of

CAPCC Petition, Appendix 1 at 10; the "word on the street" and the "message" about the bidding process, and "rumors" about a Verizon Wireless and AT&T deal. NABOB Petition at 7-8. Such statements are not sufficient to support a petition to deny.

³⁷ Declaration of John Schreiber, Executive Director, Property Planning & Acquisition, Cellco Partnership d/b/a Verizon Wireless, attached as Exhibit B hereto.

³⁸ See Declaration of Christopher J. Bartlett, Executive Director, Investment Banking Division, Morgan Stanley & Co. Incorporated ¶¶ 2-3 ("Bartlett Declaration"), attached as Exhibit C hereto.

prospective buyers, including minority and socially disadvantaged firms.³⁹ Subsequently, Morgan Stanley issued a Confidential Information Memorandum, including descriptive business information and detailed financial and operating data on the required divestiture properties on a state-level basis, to over 70 individual parties that had expressed an interest in the assets.⁴⁰ A number of smaller, rural operators, state-level carriers and financial buyers, as well as four minority-owned bidder groups and one regional consortium that included a financial sponsor that typically has sought to partner with minority-owned entities and management teams, received this Confidential Information Memorandum.⁴¹ Both Verizon Wireless and Morgan Stanley expended considerable resources toward the preparation and documentation of sales materials, and negotiation of non-disclosure agreements, with no exceptions at any stage of the process.

After reviewing the Confidential Information Memorandum, potential bidders submitted preliminary indications of interest to Morgan Stanley in mid-November 2008.⁴² Morgan Stanley, at Verizon Wireless' direction, then invited over 20 parties, including four minority-owned entities and the consortium mentioned above, to participate in more-detailed due diligence conversations.⁴³ Three of these minority-owned entities had no previous experience in the wireless communications sector.⁴⁴ In processes of this type, the inclusion of 20 parties in a "second round" of due diligence is a substantial undertaking and, thus, the number of parties invited forward typically would be much smaller. Verizon Wireless and Morgan Stanley devoted significant resources and time to prospective bidders during this stage of the process,

³⁹ *Id.* ¶ 4.

⁴⁰ *Id.* ¶ 5.

⁴¹ *Id.*

⁴² *Id.* ¶ 7.

⁴³ *Id.* ¶ 8.

⁴⁴ *Id.*

providing more-detailed financial and business due diligence information and access to management in response to specific requests and questions.⁴⁵ Morgan Stanley also provided prospective bidders with bid procedures, a draft acquisition agreement, a draft transition services agreement, a draft roaming agreement and auditable financials.⁴⁶

Preliminary indications of interest from 28 entities, including four minority-owned entities and the consortium mentioned above, were submitted to Morgan Stanley.⁴⁷ Final bids from 14 entities, including three minority-owned entities, were submitted on or after March 30, 2009.⁴⁸ Thus, from the beginning, Verizon Wireless and Morgan Stanley ensured the bidding process and access to due diligence information for these assets was open to all interested entities, including businesses owned by minorities and socially disadvantaged groups, entrepreneurs, regional and state-level wireless carriers, large wireless carriers, small telecommunications operators, financial buyers and industry veterans.

Moreover, while the process was open to all, Verizon Wireless and Morgan Stanley took additional steps to encourage participation by minority and socially disadvantaged groups at every stage of the process, including, in some instances, undertaking actions or giving considerations not provided to other bidders, like relaxing the bid timelines or other procedural

⁴⁵ *Id.*

⁴⁶ *Id.* ¶ 11.

⁴⁷ *Id.* ¶ 13. NABOB's and Telephone USA's claims that dates for the submission of bids changed without warning and that minority bidders were not given information explaining these changes are wholly inaccurate. NABOB Petition at 8; Telephone USA Petition at 3. To the contrary, Morgan Stanley sent a letter to all prospective bidders in this stage of the process, including minority-owned entities, on January 29, 2009 indicating that the final bid date was being pushed back to March 30, 2009 to account for the fact that work being done on the audited financial statements was taking longer than initially had been communicated. Bartlett Declaration ¶ 12.

⁴⁸ Bartlett Declaration ¶ 13.

requirements.⁴⁹ For example, during the initial stage of the bidding process, Morgan Stanley and a senior executive from Verizon participated in only two in-person meetings with bidders – one minority-owned bidder and the consortium mentioned above.⁵⁰ Another minority-owned bidder was provided access to the Confidential Information Memorandum without signing a non-disclosure agreement so as to expedite its due diligence.⁵¹ A minority-owned bidder also was provided access to the data site prior to submitting an initial indication of interest.⁵² Morgan Stanley and Verizon Wireless also provided any disclosable due diligence information requested by minority-owned bidding entities participating in the second stage of the process.⁵³ In addition, Morgan Stanley, at Verizon Wireless’ direction, proactively reached out to one minority-owned bidder, which previously had elected not to remain in the process and proceed into the second round, to encourage it to reconsider its decision. Morgan Stanley and senior Verizon Wireless staff also met with this bidder and provided detailed guidance as to the geographic areas in which it could be competitive in the sale process.⁵⁴

The fact that a minority or socially disadvantaged business ultimately was not selected as the purchaser for these assets does not negate the open and inclusive process that was used to conduct the divestiture sale. To the contrary, a number of government-imposed constraints were placed on this process that inhibited the likelihood of success of a minority-owned business or

⁴⁹ Verizon Wireless is committed to doing business with small and minority-owned telecommunications companies and, in fact, recently announced a spectrum swap with NEATT Wireless, LLC, a minority-owned and operated facilities based wireless provider. Press Release, Verizon Wireless, “Verizon Wireless and NEATT Wireless Sign Agreement to Swap Spectrum in Nine Arkansas Counties” (Aug. 14, 2009), available at <http://news.vzw.com/news/2009/08/pr2009-08-14k.html>.

⁵⁰ Bartlett Declaration ¶ 5.

⁵¹ *Id.* ¶ 6.

⁵² *Id.* ¶ 8.

⁵³ *Id.* ¶ 9.

⁵⁴ *Id.* ¶ 10.

socially disadvantaged entity and that required Verizon Wireless to look beyond just the dollar amount of the bid in selecting a buyer.⁵⁵ For example, the FCC and DOJ required Verizon Wireless to dispose of these assets rapidly and by a firm deadline in one of the most adverse economic climates in decades.⁵⁶ Verizon Wireless thus needed a high degree of confidence that a buyer would be deemed acceptable to both the FCC and the DOJ, and furthermore needed certainty that the divestitures would be consummated should the necessary government approvals be obtained.⁵⁷ As a result, it was essential that a prospective buyer demonstrate that it had adequate financing to complete the transaction at the time final bids were submitted, which many of the candidates were unable to do.

⁵⁵ The GA-8 Partners charge that Verizon Wireless “intentionally selected a weak competitor” in an effort to acquire subscribers through churn. GA-8 Partners Petition at 5, 12. This unsupported allegation cannot be squared with Verizon Wireless’s selection of AT&T to acquire the majority of the ALLTEL assets required to be divested in the wake of the Verizon Wireless-ALLTEL merger. *See* WT Docket No. 09-104.

⁵⁶ *See Verizon Wireless-ALLTEL Merger Order*, 23 FCC Rcd at 17519 ¶ 166 (requiring the company to file applications seeking authorization to divest this spectrum within 120 days with the possibility of getting a 60-day extension (or a maximum of 180 days)); *Final Judgment* at Section IV.A. (requiring the company to file applications seeking authorization to divest this spectrum within 120 days with the possibility of one or more extensions not to exceed 60 calendar days in total (or a maximum of 180 days) and to divest this spectrum within five days after such approval is received); *see also United States v. Bell Atlantic Corp.*, Civil No. 99-01119, Modified Final Judgment, at 34-35 (D.D.C. filed Dec. 30, 2008); *United States v. ALLTEL Corp.*, Civil No. 06-03631, Modified Final Judgment, at 27 (D. Minn. filed Oct. 31, 2008) (collectively, the “*Modified Final Judgments*”).

⁵⁷ One of the petitioners falsely accused Verizon Wireless of not following and enforcing its own announced bidding procedures. Telephone USA Petition at 3-4. The false accusation attempts to link Verizon Wireless’ \$2.35 billion divestiture of ALLTEL assets to AT&T with the \$240 million sale to Verizon Wireless of assets AT&T intends to acquire in its merger with Centennial Communications Corp, labeling these transactions a “swap” of properties. Each of these transactions is separate and independent from the other and it is incorrect to characterize them as an exchange. The consideration used in each transaction is cash, not exchanged properties. Also, neither transaction’s completion is contingent upon the completion of the other transaction. For example, Verizon Wireless’ divestiture of ALLTEL assets to AT&T would be required to close upon obtaining the requisite regulatory approvals (and the satisfaction of all other conditions) even if AT&T’s proposed merger with Centennial is not consummated. The facts demonstrate that the transaction involving Verizon Wireless and AT&T is entirely separate from the instant transaction.

In the end, Verizon Wireless chose two entities with experience operating wireless businesses, which Verizon Wireless believed would enhance the acceptability of the buyers to the government, and with the financial resources necessary to ensure that the proposed transaction would be timely consummated, as required by the *Final Judgment* and *Modified Final Judgments* and the *Verizon Wireless-ALLTEL Merger Order*.⁵⁸ Indeed, requiring such committed financing is customary in such circumstances, even if the sale process does not include divestitures mandated by regulatory bodies. Moreover, recent dislocations in the financial and credit markets made it especially challenging for smaller buyers to obtain equity funding and debt financing for an asset purchase of this size and scale.⁵⁹ Finally, a number of smaller, non-operator bidders requested multi-year commercial and operating relationships with

⁵⁸ CAPCC asserts in its petition that Verizon Wireless could have found a socially disadvantaged business to buy the assets it is selling to ATN at the same price. CAPCC Petition, Appendix 1 at 6. Telephone USA suggests that it should have been chosen because it bid more for the divestiture assets than ATN did. Telephone USA Petition at 3-4. However, price per POP was not the sole factor that Verizon Wireless considered in selecting buyers. Particularly given the July 8th deadline for identifying a buyer and having transfer applications on file, it was essential that the entity selected could demonstrate financing that would enable it to conclude the deal. As part of its proposal, ATN demonstrated that it had sufficient financial resources, based on the size of its market capitalization and strong balance sheet, to assure Verizon Wireless of its ability to fund and close the transaction with cash on hand, available financing capacity through existing credit facilities, and assurances of additional financing without contingencies. Other factors in ATN's favor were: (i) ATN is a strategic investor with wireless experience, which gave Verizon Wireless comfort that it could operate the properties as required under the *Final Judgment* and the *Verizon Wireless-ALLTEL Merger Order*; (ii) ATN was able to conclude negotiations with Verizon Wireless on a definitive purchase agreement and three ancillary agreements in a timely manner that enabled Verizon Wireless to satisfy the DOJ and FCC divestiture requirements and deadlines; and (iii) ATN did not require a lengthy transition services agreement. All other remaining bidders were lacking in one or more of these characteristics. Despite many requests by Verizon Wireless, Telephone USA never produced any evidence of committed funding, a credible path to obtain funding, or cash on hand sufficient to support the purchase price. Telephone USA also requested an operating support agreement from Verizon Wireless and proposed a long-term operating arrangement for Verizon Wireless's consideration. Ultimately, Telephone USA offered no evidence of its ability to operate the Divestiture Assets independently of Verizon Wireless. Accordingly, the amount of its proposed purchase price was irrelevant.

⁵⁹ Bartlett Declaration ¶ 15 (noting that a number of the bids submitted by smaller, non-operator bidders, including minority-owned bidders, lacked funding commitments or were based on financing that was not committed by a lending institution or otherwise not guaranteed).

Verizon Wireless in connection with the transition.⁶⁰ This, however, was contrary to the DOJ's general position regarding transition services and the buyer quickly achieving independent operations that could have jeopardized approval of a sale.⁶¹

4. The divestiture process was equitable and not tainted by any conflict of interest.

In their petitions, NABOB and Telephone USA accuse Morgan Stanley of having an improper conflict of interest that resulted in the Divestiture Assets being offered to ATN at a below market price.⁶² The Commission should summarily reject this argument, which is both unfounded and irrelevant to the Commission's review of the proposed transaction.

Like other large, full-service financial firms, Morgan Stanley routinely trades in millions of securities each day, including securities of firms involved in transactions in which its investment banking division is providing financial advisory services. In accordance with securities law and applicable regulations, Morgan Stanley has established policies and procedures designed to avoid and/or minimize actual and apparent conflicts that may arise from the divergent activities in which Morgan Stanley is engaged.⁶³ Specifically, Morgan Stanley has

⁶⁰ Bartlett Declaration ¶ 14. Verizon Wireless also was compelled to consider a myriad of factors in its decisions regarding the divestiture sales, including but not limited to (i) the challenging schedule that was mandated by orders of the Federal Court and FCC to complete an enormous sale of 105 wireless markets scattered across 22 states, (ii) realizing the best value possible under severely depressed market conditions, (iii) the immense complexities and risks associated with negotiating and closing multiple transactions, (iv) extremely onerous logistics and substantial expense-related risks associated with maintaining the large back office infrastructure and supporting transition services for multiple buyers, (v) the uncertainties of the regulatory approval processes, and (vi) the consequences of failing to comply with the FCC's *Verizon Wireless-ALLTEL Merger Order* or the *Final Judgment* and *Modified Final Judgments*.

⁶¹ *Final Judgment* at 16 (“At the option of the Acquirer(s) of the Divestiture Assets, defendants shall enter into a contract for transition services customarily provided in connection with the sale of a business providing mobile wireless telecommunications services or intellectual property licensing sufficient to meet all or part of the needs of the Acquirer(s) *for a period of up to one year*”) (emphasis added).

⁶² NABOB Petition at 9-11; Telephone USA Petition at 7-8.

⁶³ Bartlett Declaration ¶ 17.

implemented procedures to ensure that no personnel involved in advising its investment banking clients (such as Verizon Wireless with respect to the divestitures) have any communication regarding non-public information relating to or arising out of such engagement with any person employed by or associated with Morgan Stanley or any of its affiliates that trades in securities, provides investment management, brokerage activities or financial planning services.⁶⁴ Similarly, Morgan Stanley's investment banking division is also insulated from non-public information regarding securities trading activity by its other divisions.⁶⁵ This separation is accomplished in a variety of ways, including through internal informational barriers and confidentiality procedures.

Thus, at all times during the course of Morgan Stanley's work on the Verizon Wireless divestitures, the Morgan Stanley personnel engaged in advising Verizon Wireless on this project (the "MS Verizon Wireless Team") were shielded from non-public information regarding Morgan Stanley's securities trading.⁶⁶ Indeed, Morgan Stanley has confirmed that, during the entire duration of the bidding process, no member of the MS Verizon Wireless Team had any knowledge that Morgan Stanley had an ownership holding in ATN.⁶⁷ As such, there was no possibility that the MS Verizon Wireless Team could have been influenced in any way by this information.

Yet, even if one or more members of the MS Verizon Wireless Team possessed information that Morgan Stanley held a modest ownership position in ATN – which they did not

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* ¶ 18. Morgan Stanley's ownership of ATN stock was included in periodic filings with the SEC, which were made publicly available. *See* NABOB Petition at Exhibit 1. However, as noted above and verified in the Bartlett Declaration, no member of the MS Verizon Wireless Team was aware of Morgan Stanley's holdings in ATN during the course of the bidding process.

– it is ridiculous to suggest that this somehow would motivate them to take steps to ensure ATN was selected and/or received a below market price. Contrary to NABOB’s allegation, Morgan Stanley’s stake in ATN was in no way “substantial.” According to the most recently filed SEC report at the time the bidding was conducted, Morgan Stanley’s stake in ATN was only 16,000 shares, with an estimated value of approximately \$650,000. The opportunity for the company to make a comparatively minute profit on any increased value in ATN shares is not even cognizable given Morgan Stanley’s current market capitalization of approximately \$40 billion.⁶⁸ Thus, even if the MS Verizon Wireless Team was aware of Morgan Stanley’s holding in ATN, which they were not, this information would in no way influence team members’ behavior.⁶⁹ In any event, it was Verizon Wireless and not Morgan Stanley that directed outreach to bidders in this process. Verizon Wireless specifically directed outreach to ATN and engaged ATN as a potential bidder.

Finally, NABOB’s and Telephone USA’s allegation that ATN may have received a below market price is simply irrelevant to the Commission’s consideration of the transaction. The Communications Act is clear that the Commission’s assessment is “as if the proposed transferee or assignee were making application under Section 308 for the permit or license in

⁶⁸ Further, the fee to be paid to Morgan Stanley by Verizon Wireless in connection with its work on the divestitures is calculated based on a percentage of the sale price of such divestiture assets. Pursuant to this arrangement, Morgan Stanley was provided with strong economic incentive to facilitate and recommend transactions that maximized the sale proceeds to Verizon Wireless. The increase in its fees from Verizon Wireless for a fairly modest increase in sale price above ATN’s purchase price would have exceeded the gain Morgan Stanley and its clients may have realized from its limited holdings in ATN that followed the transaction announcement. It also would not have been worth the risk of tainting the institution’s reputation for the sake of a relatively modest gain (likely less than \$500,000), which represents a tiny fraction of Morgan Stanley’s reported net revenues of \$8.4 billion for the first half of 2009. Bartlett Declaration ¶ 19.

⁶⁹ Morgan Stanley invests as a principal and it also manages funds that invest for their own account or the accounts of its customers. Therefore, some or all of Morgan Stanley’s positions in ATN stock as disclosed in any of its SEC reports may represent positions held by funds managed by Morgan Stanley and its affiliates and investing third party funds, or positions held by Morgan Stanley and its affiliates on behalf of its customers in connection with market making activities or otherwise. To the extent, if any, that Morgan Stanley’s holdings of ATN stock were for the account of others, Morgan Stanley did not stand to profit from any increase in the value of the ATN stock.

question” and “may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.”⁷⁰ As such, the agency does not review the sufficiency of the price paid for assets involved in a transaction,⁷¹ nor does it review whether other entities might have paid more.⁷²

For these reasons, NABOB’s and Telephone USA’s allegation that Morgan Stanley had a conflict of interest that “tainted” the sale process and resulted in ATN being offered a lower price for the Divestiture Assets is completely unfounded. It is also irrelevant to this proceeding.⁷³

⁷⁰ 47 U.S.C. § 310(d).

⁷¹ See *Application of Puerto Rico Telephone Authority, Transferor and GTE Holdings (Puerto Rico) LLC, Transferee, For Consent to Transfer Control of Licenses and Authorizations Held by Puerto Rico Telephone Company and Celulares Telefonica, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 3122, 3144-45 ¶ 49 (1999) (declining to address the issue of whether the purchase price agreed upon for the sale of Puerto Rico Telephone Company to GTE Holdings was fair).

⁷² See n. 31 *supra*.

⁷³ Additionally, the Commission once again should reject CAPCC’s request that consent to transfer of the divestiture assets be denied because Verizon Wireless’ foreign ownership showing is inadequate. See CAPCC Petition, Appendix 1 at 12-29. The Commission repeatedly has approved Verizon Wireless’ foreign ownership showing and expressly rejected CAPCC’s claims. Specifically, in the *Verizon Wireless-ALLTEL Merger Order*, the Commission concluded that “Chatham misconstrues the methodology that Verizon Wireless has used to demonstrate compliance with its section 310(b)(4) ruling” and that “there is no substantial or material question of fact as to whether Verizon Wireless’ foreign ownership complies with the limitations of the *Vodafone-Bell Atlantic Order*.” *Verizon Wireless-ALLTEL Merger Order*, 23 FCC Rcd at 17544-45 ¶¶ 228-229 & n.793 (citing several instances in which it had approved foreign ownership showings based on the same compliance methodology used by Verizon Wireless). CAPCC offers no new fact or argument that justifies revisiting the Commission’s conclusive resolution of this issue.

IV. CONCLUSION

For the foregoing reasons, the Commission should dismiss or deny each of the filings made in opposition to the captioned applications. Applicants have demonstrated that the proposed transaction serves the public interest, convenience and necessity. Accordingly, the Commission should expeditiously grant the applications to transfer control or assign certain wireless licenses and authorizations from Verizon Wireless to ATN.

Respectfully submitted,

Atlantic Tele-Network, Inc.

Verizon Wireless

By: /s/ Douglas J. Minster

By: /s/ John T. Scott, III

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August 20, 2009

EXHIBIT A

**DECLARATION OF MICHAEL T. PRIOR
PRESIDENT AND CHIEF EXECUTIVE OFFICER
ATLANTIC TELE-NETWORK, INC.**

I, Michael T. Prior, hereby submit the following declaration upon penalty of perjury:

1. I am the President and Chief Executive Officer of Atlantic Tele-Network, Inc.
2. I have personal knowledge regarding the factual statements pertaining to Atlantic Tele-Network, Inc. contained in the Joint Opposition of Atlantic Tele-Network, Inc. and Verizon Wireless being filed with the Federal Communications Commission in WT Docket No. 09-119, and those statements are true and correct to the best of my knowledge.

Executed on this 20th day of August, 2009.



Michael T. Prior

EXHIBIT B

**DECLARATION OF JOHN SCHREIBER,
EXECUTIVE DIRECTOR, PROPERTY PLANNING & ACQUISITION,
CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**

I, John Schreiber, am the Executive Director of Property Planning & Acquisition for Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless"). In this role, I am responsible for the divestitures required under the FCC's *Verizon/ALLTEL Order*, the Final Judgment entered in *United States, et al. v. Verizon Comm'ns Inc. & Alltel Corp.*, the Modified Final Judgment entered in *United States v. Bell Atlantic Corp., GTE Corp. and Vodafone AirTouch PLC*, and the Modified Final Judgment entered by the Court in *United States & State of Minn. V. Alltel Corp. & Midwest Wireless Holdings LLC*. I hereby declare under penalty of perjury that the facts contained in the Joint Opposition of Verizon Wireless and Atlantic Tele-Network, Inc. regarding the factual statements contained in Section III.B. pertaining to the sale process undertaken by Verizon Wireless to accomplish the mandated Alltel divestitures that are not attested to by Christopher J. Bartlett of Morgan Stanley & Co. Incorporated are true and correct to the best of my knowledge.

Executed on this 20th day of August, 2009.


John Schreiber

EXHIBIT C

**DECLARATION OF CHRISTOPHER J. BARTLETT,
EXECUTIVE DIRECTOR, INVESTMENT BANKING DIVISION,
MORGAN STANLEY & CO. INCORPORATED**

Christopher J. Bartlett hereby submits this declaration to the Federal Communications Commission (the Commission”), pursuant to Section 1.16 of the Commission’s rules, 47 C.F.R. § 1.16, in connection with the Joint Opposition of Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) and Atlantic Tele-Network, Inc. (“ATN”).

1. I am an Executive Director in the Investment Banking Division of Morgan Stanley & Co. Incorporated (“Morgan Stanley”). Morgan Stanley is a financial advisor to companies, governments, and investors around the world. Morgan Stanley is a global financial services firm engaged, either directly or through its affiliates, in various activities, including in the securities, investment management and individual wealth management businesses. Our securities business is engaged in securities underwriting, trading and brokerage activities, foreign exchange, commodities and derivatives trading, prime brokerage, as well as providing investment banking, financing and financial advisory services.

2. In March 2007, Verizon Wireless engaged Morgan Stanley as its financial advisor in connection with the proposed acquisition of Alltel Corporation. The engagement included advisory services to be provided by Morgan Stanley in connection with any divestitures resulting from the acquisition of Alltel. As Executive Director of the Investment Banking Division for Morgan Stanley, I coordinated the day-to-day activities at Morgan Stanley related to the divestiture sale process, including interacting with prospective purchasers, coordinating responses to due diligence requests made by prospective purchasers, and providing advice to Verizon Wireless, as well as other transaction matters as directed by Verizon Wireless. I worked closely throughout the process with staff at Verizon Wireless, Alltel Corporation and others at Morgan Stanley.

3. In August 2008, Morgan Stanley and Verizon Wireless began working on the sale of the assets Verizon Wireless was required to divest pursuant to regulatory action of the FCC and U.S. Department of Justice, as reflected in the FCC’s *Verizon-Alltel Order* and DOJ’s Final Judgment and Modified Final Judgments.¹

¹ *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 and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008); *United States of America et al. v. Verizon Communications Inc. and Alltel Corporation*, Civil No. 08-1878, Final Judgment, at 9 (entered Apr. 24, 2009); *United States v. Bell Atlantic Corp., GTE Corp. and Vodafone AirTouch PLC*, Civil No. 99-01119, Modified Final Judgment, at 34-35 (entered Dec. 31, 2008); *United States & State*

4. In August and September 2008, and at later dates as additional parties contacted Verizon Wireless and Morgan Stanley, Morgan Stanley sent a Preliminary Overview of the Divestiture Assets and a confidentiality agreement to approximately 70 prospective buyers. This group of prospective buyers included national, regional, and small wireless carriers, wireline telecommunications companies, entrepreneurs, financial buyers, industry veterans, and businesses owned by minorities and socially disadvantaged groups.
5. The sale process was officially launched in October 2008. In November 2008, Morgan Stanley distributed a Confidential Information Memorandum, including descriptive business information and detailed financial and operating data on the required divestiture properties on a state-level basis, to over 70 individual parties that had expressed an interest in the assets. This included a number of smaller, rural operators, state-level carriers, and financial buyers. This also included 4 minority-owned bidder groups and a regional consortium which included a financial sponsor that typically has sought to partner with minority-owned entities and management teams. At this early stage of the sale process, only two in-person meetings with potential bidders (one minority-owned entity and the consortium mentioned above) were held by Morgan Stanley and a senior executive from Verizon.
6. As is customary in sale processes of this sort, the vast majority of potential bidders were required to sign a Non-Disclosure Agreement prior to obtaining the Confidential Information Memorandum. However, an exception was made for one minority-owned entity that was provided access to the Confidential Information Memorandum prior to signing a Non-Disclosure agreement so as to expedite its due diligence.
7. After reviewing the Confidential Information Memorandum, potential bidders submitted preliminary indications of interest to Morgan Stanley in mid-November 2008. A small number of potential purchasers, including one minority-owned entity, were permitted to submit preliminary indications of interest later in the sale process to facilitate their inclusion in the process.
8. After reviewing the preliminary indications of interest, Morgan Stanley, at the direction of Verizon Wireless, invited over 20 parties to participate in more detailed due diligence, including, but not limited to data room access and access to company management. Of these parties, four were minority-owned entities and one was the consortium mentioned above. Only one of these four minority-owned entities has previous experience in the wireless communications sector. Morgan Stanley, at Verizon Wireless' direction, also provided one minority-owned entity access to the online data room prior to its submission of any preliminary indication of interest in order to expedite its due diligence. Morgan Stanley and Verizon Wireless devoted significant resources and time to prospective bidders during this stage of the process, providing more detailed financial and business due diligence information and access to management in response to specific requests and questions.

9. Morgan Stanley and Verizon Wireless provided any disclosable due diligence information requested by minority-owned bidding entities participating in this stage of the process.
10. Morgan Stanley at the direction of Verizon Wireless proactively reached out to one minority-owned bidder, who previously elected voluntarily not to proceed during the second round of the sale process, to encourage it to reevaluate participating in the process. Morgan Stanley and senior Verizon Wireless staff also spoke with this bidder and provided detailed geographical guidance as to where it could be competitive in the bidding process.
11. In January 2009, Morgan Stanley provided prospective bidders with bid procedures, a draft acquisition agreement, and a draft transition services agreement. In February 2009, Morgan Stanley provided them with a draft roaming agreement. In early March 2009, Morgan Stanley provided them with financial statements that were in the process of being audited by Pricewaterhouse Coopers LLP (“Pricewaterhouse”).
12. A letter outlining the procedures for submitting final bids was sent to prospective bidders by Morgan Stanley on January 13, 2009. The letter indicated a final bid date in mid-February 2009. It subsequently became clear that the work being done on the audited financial statements (being prepared by Pricewaterhouse) was taking longer than had initially been communicated, and as a result Morgan Stanley sent a revised letter outlining bid procedures to prospective bidders on January 29, 2009, indicating a final bid date of March 30, 2009. All minority-owned entities in this stage of the process received the revised bid procedures letter stating the bid date had been changed to March 30, 2009.
13. Preliminary indications of interest from 28 entities, including 4 minority-owned entities and the consortium mentioned above, were submitted to Morgan Stanley. Final bids from 14 entities, including 3 minority-owned entities, were submitted on or after March 30, 2009.
14. As part of their bids or in discussions with prospective bidders regarding their interest, a number of smaller, non-operator bidders, including minority-owned entities, requested multi-year transition service agreements or long-term commercial and operating relationships with Verizon Wireless.
15. A number of the bids submitted by smaller, non-operator bidders, including minority-owned entities, lacked funding commitments or were based on financing that was not committed by a lending institution or otherwise not guaranteed. For example, Telephone USA was not able to demonstrate that it had secured committed financing to support its proposal, despite repeated requests from Morgan Stanley and Verizon Wireless to furnish such committed financing.
16. Morgan Stanley, its affiliates, directors and officers may at any time invest on a principal basis or manage funds that invest, hold long or short positions, finance positions, and may trade or otherwise structure and effect transactions, for their own

account or the accounts of its customers, in debt or equity securities or loans of our clients or any other company, or any currency or commodity, that may be involved in any transaction on which we are advising, or any related derivative instrument.

17. In accordance with securities law, applicable regulations and to prevent the impermissible use of confidential information as well as to manage any potential conflicts of interest, Morgan Stanley has established policies and procedures reasonably designed to (i) assist professionals' compliance with such applicable laws and regulations; (ii) avoid and/or minimize actual and apparent conflicts that may arise from the divergent activities in which it is engaged; (iii) ensure that no person involved in advising its investment banking clients with respect to transactions has any communication regarding non-public information relating to or arising out of such engagement with any person employed by or associated with Morgan Stanley or any of its affiliates that trades in securities, provides investment management, brokerage activities or financial planning services; and (iv) ensure that Morgan Stanley's investment banking division is insulated from non-public information regarding securities trading activity by other Morgan Stanley divisions. Separation is accomplished in a variety of ways, such as, among other things, internal informational barriers and confidentiality procedures. Morgan Stanley personnel engaged in advising Verizon Wireless concerning the divestitures (the "MS Verizon Wireless Team") were subject to such separation policies.

18. I have talked with each member of the MS Verizon Wireless Team. Each has confirmed to me that they were unaware that Morgan Stanley had stockholdings in ATN during the course of the bidding process. I hereby confirm that I had no such knowledge during the bidding process.

19. The fee to be paid to Morgan Stanley by Verizon Wireless in connection with its work on the divestitures is calculated based on a percentage of the sale price of such divestiture assets. Pursuant to this arrangement, Morgan Stanley was provided with strong economic incentive to facilitate and recommend transactions that maximized the sale proceeds to Verizon Wireless. The increase in its fees from Verizon Wireless for a fairly modest increase in sale price above ATN's purchase price would have exceeded the gain Morgan Stanley and its clients may have realized from its limited holdings in ATN that followed the transaction announcement. It simply would not have been worth the risk of tainting the institution's reputation for the sake of a relatively modest gain (likely less than \$500,000), which represents a tiny fraction of Morgan Stanley's reported net revenues of \$8.4 billion for the first half of 2009.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 20th day of August, 2009.

A handwritten signature in black ink, appearing to read "C. Bartlett", is written over a horizontal line. The signature is stylized and somewhat cursive.

Christopher J. Bartlett

CERTIFICATE OF SERVICE

I, Bridget Anderson of Wilkinson Barker Knauer, LLP, do hereby certify that a copy of the foregoing Joint Opposition of Atlantic Tele-Network, Inc. and Verizon Wireless to Petitions to Deny was sent on this 20th day of August, 2009, by first class U.S. mail, postage prepaid (or by email where indicated by an asterisk), to the following individuals:

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