

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

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

To: The Commission

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

The National Association of Black Owned Broadcasters, Inc. (“NABOB”), by its attorneys, pursuant to Section 309(d)(1) of the Communication Act, 47 USC §309(d)(1) and Section 1.939 of the Commission’s Rules, 47 CFR §1.939, hereby submits its Reply to the “Joint Opposition of Atlantic Tele-Network, Inc. and Verizon Wireless to Petitions to Deny” (“Joint Opposition”) submitted by Cellco Partnership d/b/a Verizon Wireless (“VZW”) and Atlantic Tele-Network, Inc. (“ATN”), with respect their application seeking Commission consent to assign and transfer control of licenses and authorizations from the assets of ALLTEL, Inc. (“ALLTEL”)(the “Application”).

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

the Commission to deny the Application or designate it for hearing to investigate: (1) the extent to which VZW and AT&T had agreed to the proposed transaction while VZW pretended to entertain offers from other bidders, and (2) whether allowing VZW and AT&T to increase their national and local market dominance is in the public interest.

In its Petition to Deny the instant transaction, NABOB demonstrated that, in addition to the serious issues raised by the VZW-AT&T transaction, the VZW-ATN transaction also raises issues. NABOB demonstrated that the VZW-ATN transaction provided ATN a substantially below market price, and, that the substantially below market price was provided to ATN because of a conflict of interest that rendered the bidding process a sham. NABOB demonstrated that the instant transaction is an additional manipulation of the Divestiture Order. NABOB requested that the Commission: deny the Application and direct VZW to conduct a true bidding process that makes a real effort to sell the Divestiture Assets to minorities and new entrants. In the alternative, NABOB requested that the Commission designate the Application for hearing to investigate the extent to which a conflict of interest prevented VZW and ATN from entering into an arms length transaction, resulted in ATN being given a substantially below market price for the Remaining Divestiture Assets, and thus precluded minorities, new entrants and smaller carriers from a fair opportunity to acquire the Remaining Divestiture Assets.

In their Joint Opposition, VZW and ATN assert that: (1) NABOB has no standing to participate in this proceeding, (2) the Commission cannot consider any other buyers, and (3) VZW made an effort to sell the Divestiture Assets to minority buyers. As NABOB shall demonstrate below, VZW has failed to demonstrate that they conducted a fair and open bidding process for the Divestiture Assets, and the Commission should deny the Application or designate it for an

evidentiary hearing.

I. NABOB HAS STANDING TO PARTICIPATE IN THIS PROCEEDING

VZW and ATN fail to see the irony of their argument that NABOB has no standing to participate in the proceeding. If VZW had done an effective job of recruiting and considering minority bidders for the Divestiture Assets (as was minimally required by the Commission), NABOB members would have participated in a true and fair bidding process rather than have been excluded by design. In its Petition to Deny, NABOB showed that it is the only trade association representing the interests of the 240 African American owned radio stations and 10 African American owned television stations in the United States. NABOB pointed out that the divestiture of the licenses and authorizations before the Commission is a critical opportunity for the Commission to effectively promote minority ownership in the wireless industry. NABOB demonstrated that promotion of diversity of ownership in the telecommunications industry has been an important Commission policy for decades.¹ NABOB stated that members of NABOB are seeking to become owners of wireless services that will be part of the national broadband network and, in particular, some members of NABOB bid to acquire the Divestiture Assets. NABOB added that, in addition, members of NABOB are customers of VZW. This clearly established that NABOB has vital interests in the proposed disposition of the Remaining Divestiture Assets and in the Commission's policies that will impact diversity of ownership in the wireless industry, and that it has standing to submit its Petition to Deny.

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

VZW and ATN, however, assert that NABOB has failed to identify its members that will be harmed by grant of the Application and failed to substantiate their claims of harm. The evidence of harm is one of exclusion; if the Commission investigates the procedures followed by VZW in soliciting and dealing with minority bidders, the Commission will see that VZW did not follow the letter or spirit of the Divestiture Order with respect to good faith efforts to include and negotiate with minority owned firms (as it did with AT&T and ATN). The harm to NABOB members will be self-evident at that point. In addition, as discussed below, it is highly disingenuous for VZW to complain that NABOB's members have not been identified, when, as discussed below, VZW knows that it required all bidders to sign a Non-Disclosure Agreement which precludes them from disclosing that they had any communications with VZW regarding bidding for the Divestiture assets or the content of any such communications.

II. VZW AND ATN HAVE FAILED TO REFUTE NABOB'S ASSERTION THAT THE BIDDING PROCESS WAS A SHAM

VZW and ATN attempt to demonstrate that they complied with the Commission's direction that, "[W]e encourage Verizon Wireless to consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture Assets and/or accessing spectrum, to the extent possible.² However, as NABOB demonstrated in its Petition to Deny, the steps that VZW claims to have taken to sell the divestiture assets to minority owned companies are clearly merely "window dressing" on a process that was set up for AT&T and ATN from the beginning.

par. 2. See, 47 USC §§257, 309(i)(3) and 309(j)(3)(B).

VZW submits the Declaration of John Schreiber, Executive Director, Property Planning & Acquisition of VZW, and the Declaration of Christopher J. Bartlett, Executive Director, Investment Banking Division, Morgan Stanley & Co. Incorporated (“Morgan Stanley”) describing the process through which the Divestiture Assets were sold. However, the Declarations provide no facts to refute the description of the process provided in NABOB’s Petition to Deny. In its Petition to Deny NABOB explained that Morgan Stanley announced at the outset that VZW preferred to sell all of the Divestiture Assets to a single purchaser. This preference made it clear that no minority purchaser was a preferred purchaser, because it was very unlikely that a minority purchaser, or any new entrant, could finance such an acquisition. Rather, the message from the outset was that there would be no special effort to sell to a minority or new entrant. Thus, in spite of the external appearance of an open process, the bidding was set up to favor a large existing carrier from the beginning. Obviously, this meant the process was set up to favor AT&T from the outset. The point at which ATN was brought into this conspiracy is less clear, but it appears that they are willing participants in this scheme.

NABOB also showed that the process to which the minority bidders and new entrants were subjected was erratic and inconsistent. Dates set for submission of bids changed without warning, and no information was provided to minority bidders explaining these changes. It began to appear to some bidders that the process was being manipulated to favor some bidders that seemed to be getting special treatment. Soon, the “word on the street” was that everyone was wasting their time, because a deal had already been made between VZW and AT&T. These rumors were given more credence by a *Wall Street Journal* article pointing out that AT&T was seeking to purchase the Divestiture

² *Id.* at par. 162.

Assets, and it “is in the strongest financial position of the interested companies.”³ This was before the deadline for submission of bids. Indeed, one prospective minority purchaser dropped out of the bidding after one of its potential financing sources lost interest after hearing that a deal had already been struck between AT&T and VZW.

Moreover, the accuracy of NABOB’s description of the process was proven by the end result. As had been predicted, AT&T was the big winner and all minority buyers were shut out. The conclusion that the sale to AT&T was predetermined was made even clearer when the *Wall Street Journal* reported the announced sale. In the same article in which the sale of the Divestiture Assets to AT&T was announced, it was reported that in a separate transaction, VZW agreed to purchase several service areas from AT&T.⁴ The sale of the Remaining Divestiture Assets to ATN at a substantially below market price -- below the prices bid by minority bidders -- added to the clear message that this process was rigged from the beginning, and minority bidders had been subjected to a sham process.

Mr. Bartlett’s effort to minimize the significance of Morgan Stanley’s stock ownership in ATN does nothing to refute the clear conflict of interest that existed. The compensation system of an organization like Morgan Stanley can allow one or two individuals to receive substantial compensation for a specific transaction. Thus, while a potential \$500,000 stock run-up benefit from orchestrating the VZW-ATN transaction may be a small part of Morgan Stanley’s revenues, it could be a substantial benefit for one or two individuals who orchestrated it.

Before the sale process began, it was described to members of the public and members of

³ *Wall Street Journal*, February 4, 2009, at <http://online.wsj.com/article/SB123370887127645883.html>.

⁴ *Wall Street Journal*, May 9, 2009, at <http://online.wsj.com/article/SB124181197313301707>.

Congress as an auction of the Divestiture Assets. However the actual process bore little resemblance to an auction. An auction suggests that the process had some identifiable standards that would determine the winning bidder. However, the process followed by VZW had no such standards.

As VZW well knows, it required all bidders to execute Non-Disclosure Agreements, which forbade them from releasing to the public or the Commission any information about the bidding process, including the mere existence of the Non-Disclosure Agreements, unless that information had already been made public knowledge. Because, VZW disclosed the existence of the Non-Disclosure Agreements in the Schreiber Declaration, NABOB is free to mention the existence of those agreements in this Reply. However, the Non-Disclosure Agreements continue to prohibit the bidders from providing any specific detailed information about the bidding process⁵.

The prohibition on the public disclosure of details about the bidding process, including identifying the parties who actually bid, is an additional reason why the Application must be designated for hearing. Regardless of the existence of the Non-Disclosure Agreements, in a hearing the Commission can require the bidders to disclose information about the bidding process, which they are currently precluded from disclosing. Therefore, the Commission should designate the Application for a hearing and solicit information from VZW about the actual bidding process, identifying the parties who bid, and request information about the bidding process from those bidders.

III. CONCLUSION

⁵ The Commission should request VZW to formally submit the “Procedures Letter(s)” it used with the bidders. The Commission will then be able to determine how VZW did not follow its own Procedures Letter(s), yet used it to minimize minority firm participation and engagement.

In the Divestiture Order, the Commission clearly provided VZW notice that it should “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.” However, VZW flouted the Commission’s Divestiture Order, and held a “window dressing” bidding process. Indeed, the blatant manner in which VZW and AT&T chose to carve up the national mobile wireless market demonstrates that VZW and AT&T are attempting to go beyond oligarchy into a mere duopoly of national wireless carriers. The sale to ATN of the Remaining Divestiture Assets at a substantially below market price adds further detail to the picture that had already become apparent. VZW never intended to sell any of the Divestiture Assets to companies owned and controlled by minorities or other new entrants.

NABOB submits that the Commission must deny the Application as not being in the public interest and direct VZW to conduct a true bidding process that makes a real effort to sell the Divestiture Assets to minorities and new entrants. In the alternative, the Commission should designate the Application for hearing, pursuant to Section 309(e) to: (1) investigate the extent to which VZW, AT&T and ATN had prearranged this sale before the bidding process for the minorities, new entrants and smaller carriers had even begun, (2) investigate the extent to which conflicts of interest prevented VZW and ATN from entering into an arms length transaction and resulted in ATN being given a substantially below market price for the Remaining Divestiture Assets, and (3) obtain information from VZW and the bidders about the actual process and the extent to which all bidders were treated fairly.

CERTIFICATE OF SERVICE

I, James Winston, Executive Director and General Counsel of the National Association of Black Owned Broadcasters, Inc., do hereby certify that on August 27, 2009, true copies of the foregoing "Reply" were mailed under my direction, first class U.S. mail, postage pre-paid to the following:

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