

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

In re Applications of Atlantic Tele-Network, Inc.	)	
and Verizon Wireless for Consent to the	)	WT Docket No. 09-119
Assignment and Transfer of Control of	)	DA 09-1515
Commission Licenses and Authorizations Pursuant	)	
to Sections 214 and 310(d) of the Communications	)	File Nos. 003858521, <i>et al.</i>
Act	)	

**REPLY TO JOINT OPPOSITION TO PETITION TO DENY**

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August 27, 2009

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## Summary

Bulloch Cellular, Inc., Pineland Cellular, Inc., Planters Rural Cellular, Inc. and Plant Cellular RSA 8, Inc. (collectively, “Georgia Partners”) continue to oppose the proposed transaction between Atlantic Tele-Network, Inc. (“ATN”) and Verizon Wireless (“Verizon”) because it is not in the public interest. The Georgia Partners renew their request for the Federal Communications Commission (“FCC” or “Commission”) to deny the above-captioned applications, or in the alternative, designate the applications for a hearing pursuant to Section 309(e) of the Act or hold the applications in abeyance pending resolution of the issue of whether Verizon has the legal ability to transfer its ownership interest in the FCC licenses for the State of Georgia to ATN.

Transfer of these licenses to ATN is inconsistent with the terms of the Verizon/Alltel merger order which requires the acquiring company to have the intent and capability to be a viable competitor. A transfer would also be contrary to the public interest given ATN’s lack of domestic retail wireless experience, documented evidence of ineffective competition involving its offshore subsidiaries, and indications that ATN is willing to forgo retail subscriber success for roaming-revenue opportunities. Moreover, Verizon does not possess the legal ability to transfer the Georgia licenses to ATN. The licenses and related partnership and management agreements are subject to a right of first refusal and restriction on assignability, respectively, and Verizon’s failure to comply with its contractual obligations pursuant thereto is currently being litigated in federal district court in Georgia. If the Commission does not deny the applications or designate them for hearing, the applications should be held in abeyance pending a determination of whether Verizon has the legal ability to transfer its ownership in the Georgia licenses to ATN.

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Bulloch Cellular, Inc. (“Bulloch”), Pineland Cellular, Inc. (“Pineland”), Planters Rural Cellular, Inc. (“Planters”) and Plant Cellular RSA 8, Inc. (“Plant”) (collectively, “Georgia Partners”), by their attorneys and pursuant to Section 1.939 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”) and the Commission’s July 9, 2009 Public Notice<sup>1</sup>, hereby reply to the Joint Opposition<sup>2</sup> filed by Verizon Wireless (“Verizon”) and Atlantic Tele-Network, Inc. (“ATN”) (collectively, “Applicants”) in response to the petition to deny (“Petition”) filed by the Georgia Partners in connection with the above-captioned applications (“Applications”) to assign or transfer control of various FCC authorizations from Verizon to ATN.

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<sup>1</sup> *Atlantic Tele-Network, Inc. and Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations*, Public Notice, WT Docket No. 09-119, DA 09-1515, rel. July 9, 2009.

<sup>2</sup> Joint Opposition of Atlantic Tele-Network, Inc. and Verizon Wireless to Petitions to Deny (filed August 20, 2009) (“Joint Opposition”).

**I. THE PROPOSED LICENSE TRANSFERS ARE CONTRARY TO THE PUBLIC INTEREST AS DEFINED BY THE VERIZON/ALLTEL MERGER APPROVALS.**

In their Joint Opposition, Verizon and ATN argue that the proposed transaction will serve the public interest by pointing to ATN's qualifications to hold a Commission license, the fact that the transaction will result in a "fresh competitive presence," ATN's experience operating a roam-only network, and its "strong financial position."<sup>3</sup> The Georgia Partners do not disagree that ATN is qualified to hold a Commission license nor that it will enter the Georgia Cluster markets as a new competitor. Neither do the Georgia Partners disagree that ATN's financial position and experience operating a roam-only network would ordinarily serve the public interest. However, what Applicants fail to concede is that due to the conditions placed on the licenses in question by the Verizon/Alltel merger approvals, the public interest determination that the Commission must make here is not limited to ATN's general qualifications as a licensee. Rather, in making its public interest determination in this proceeding, the Commission is required 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."<sup>4</sup> While Applicants argue that 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

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<sup>3</sup> *Id.* at pp. 3-4.

<sup>4</sup> *U.S. v. Verizon Communications Inc. and Alltel Corporation*, Final Judgment, No.: 1:08-cv-01878 (EGS), U.S. District Court for the District of Columbia, April 24, 2009 at Section IV(H) ("Final Judgment"). *See Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, WT Docket No. 08-95, Memorandum Opinion and Order, 23 FCC Rcd 17444, 17518-19 (2008) (subjecting Verizon's power to market and dispose of the divestiture assets to the terms of any agreement entered into between Verizon, Alltel and the U.S. Department of Justice).

Judgment,”<sup>5</sup> they fail to demonstrate that ATN has the “intent” and “necessary managerial, operational, technical and financial capability” to compete “*effectively*” at the retail level, nor do they adequately refute the evidence in the Petition that ATN is a weak competitor without the intent to truly compete at the retail level in the Georgia Cluster markets.

The Georgia Partners presented ample evidence in their Petition that ATN is not up to the task of becoming a viable competitor in the Georgia Cluster and that the transfer of control of the Georgia Cluster to ATN is not in the public interest. The Petition provided information on foreign mobile markets in which ATN has active retail operations and ATN’s operational experience through its domestic, *non-retail* mobile subsidiary Commnet. Faced with these facts, Applicants primarily attempt to discredit market research uncovered by the Georgia Partners. As discussed below, such attempts fail to demonstrate that ATN will be able to effectively compete in the Georgia Market at the retail level.

**A. Applicants Have Failed to Refute the Showing of Ineffective Competition in ATN’s Overseas Markets.**

In response to the Georgia Partners’ showing that ATN has not proven to be an effective competitor in its overseas mobile markets, Applicants have disingenuously labeled a handful of claims asserted by the Georgia Partners in the Petition as ignorant, speculative and even outright false.<sup>6</sup> The facts clearly and unequivocally support each of the claims made by the Georgia Partners.

The Georgia Partners asserted that ATN’s mobile subsidiary in Guyana (GT&T, d/b/a *Cellink* and *Cellink Plus*) had a monopoly until 2004.<sup>7</sup> The Applicants characterize this assertion as a false statement, claiming that “[f]or many years prior to 2004, GT&T competed against two

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<sup>5</sup> Joint Opposition at p. 3.

<sup>6</sup> Joint Opposition at p. 8.

<sup>7</sup> Petition at p. 6.

other carriers in Guyana: Caribbean Telecommunications, Ltd. and Cel\*Star Guyana”.<sup>8</sup> While Applicants are correct that two other carriers were authorized to serve Guyana prior to 2004, neither of them competed against GT&T.<sup>9</sup> Indeed, no less of an authority than the President of Guyana has acknowledged the existence of ATN’s monopoly position prior to 2004! Cel\*Star Guyana, the country’s second mobile operator, began testing its GSM switch on July 23, 2004.<sup>10</sup> Furthermore, Guyana’s President Bharrat Jagdeo was not only physically present at the ceremony, as evidenced by a government-published photograph<sup>11</sup>, but he expressed his happiness with witnessing the birth of “alternative cell service in Guyana.”<sup>12</sup> When Cel\*Star Guyana actually launched commercial service on November 19, 2004, President Jagdeo released a statement saying in part that “[w]e are going to find one way or another to break this monopoly” and that “[t]oday we are celebrating competition in the cellular sector.”<sup>13</sup> It is indisputable that ATN, which lost its monopoly status in 2004, has fewer mobile subscribers in Guyana than a company started less than five years ago and it is precisely this type of market erosion that calls into question ATN’s ability to survive in the U.S. domestic retail marketplace.

In responding to the Georgia Partners’ showing of ATN’s ineffective competitive presence in Bermuda, Applicants again attempt to circumvent the well publicized lack of retail success of ATN in overseas mobile markets through a mischaracterization of the Georgia

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<sup>8</sup> Joint Opposition at p. 8, footnote 19, part (1).

<sup>9</sup> As discussed below, Cel\*Star Guyana (license issued February 21, 2001) did not begin operating until 2004. Neither Caribbean Telecommunications, Ltd. (license issued April 23, 1996) nor Caribbean Wireless Telecom, LLC (license issued April 19, 2000) actually operated a retail mobile network in competition with GT&T prior to 2004.

<sup>10</sup> Cel\*Star Guyana launched service as the country’s second retail mobile operator in 2004. After initially attempting to enter the market as a third operator, Digicel purchased Cel\*Star Guyana in 2006.

<sup>11</sup> See Government of Guyana, Office of the President, <http://www.op.gov.gy/photos/gallery56.htm> (last checked August 27, 2009)

<sup>12</sup> See Official Release of the Government Information Agency of Guyana, July 23, 2004 <http://www.gina.gov.gy/archive/daily/b040723.html> (last checked August 27, 2009).

<sup>13</sup> See Official Release of the Government Information Agency of Guyana, November 19, 2004 <http://www.gina.gov.gy/archive/daily/b041119.html> (last checked August 27, 2009).

Partners' argument. The Georgia Partners argued that "[j]ust as with ATN's operations in Guyana, in Bermuda, ATN has proven to be anything but an effective competitor even against a marketplace upstart like Digicel."<sup>14</sup> Applicants attempt to refute this claim by both ridiculing the Georgia Partners' knowledge of the Caribbean wireless marketplace and by insisting that Digicel is in fact not an "upstart."<sup>15</sup> A plain-reading of the *full* sentence relied upon by Applicants shows that the word "upstart" was intended to refer to Digicel's presence in the Bermuda mobile marketplace, and not the Digicel Group's overall presence in the Caribbean.<sup>16</sup> Digicel is the third and newest mobile operator to provide service in Bermuda, and by definition, it is an "upstart" in Bermuda.<sup>17</sup> Thus far, ATN has been unable to compete effectively against a fairly small regional player like Digicel in either Guyana or Bermuda. In the United States, ATN would face competition from the likes of AT&T, Sprint Nextel, T-Mobile, and of course Verizon. Given its past performance abroad, ATN's ability to effectively compete in the Georgia Market, let alone throughout five additional states in the U.S., remains questionable at best.

The Georgia Partners presented well-documented evidence that ATN is providing ineffective competition in the retail mobile sector of small countries like Guyana and Bermuda. Instead of presenting contradictory evidence showing ATN's success through either subscriber or revenue growth (or both), the Applicants have spent all of their time trying to dismiss the Georgia Partners' claims, either by refuting the proclamation of Guyana's President or conjuring dubious arguments based on a single word taken out of context. One way to predict whether

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<sup>14</sup> Petition at pp. 7-8.

<sup>15</sup> Joint Opposition at p. 9, footnote 19, part (3).

<sup>16</sup> Petition at pp. 6-8.

<sup>17</sup> The Georgia Partners, along with most of the mobile community, are patently cognizant of Digicel's presence in the Caribbean mobile marketplace as clearly evidenced by the mentioning of Digicel by name in the discussion of ATN's activities in Guyana, Bermuda and the Turks and Caicos. The Georgia Partners describe Digicel as a "regional foreign player[]," (Petition at 8) Cable and Wireless, Digicel's main competitor in the Caribbean, is similarly described as a "regional stalwart." (Petition at 8, footnote 21)

ATN can effectively compete in the United States is to analyze its success internationally in other retail mobile environments. The Georgia Partners call the Commission's attention to the lackluster performance of ATN's retail mobile operations overseas, which is the real issue in this matter and ask again – if ATN is not successful overseas under circumstances where they should be, how can ATN be expected to compete effectively in the U.S. market which has much larger and stronger companies with proven track records and deep pockets?

**B. Applicants Have Not Shown that ATN Has the Necessary Experience to Effectively Compete in the Georgia Markets.**

Because ATN does not possess the requisite level of mobile retail experience in the United States to compete effectively against established, domestic, retail wireless operators, a transfer of assets from Verizon to ATN would be contrary to the public interest. As discussed above, the proposed transaction stems from the requirement that Verizon divest itself of certain assets, including the Georgia Cluster, following Verizon's acquisition of Alltel. The U.S. Department of Justice's (DOJ) ultimate objective in requiring a divestiture of assets is to "ensure defendants' prompt divestiture of the Divestiture Assets for the purpose of preserving viable competitors."<sup>18</sup> Specifically, DOJ requires that the divested assets, including the Georgia Cluster, be acquired by a company that "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."<sup>19</sup> ATN's small-scale retail operational experience thus far in Bermuda and Guyana does not qualify it as a "viable

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<sup>18</sup> *U.S. v. Verizon Communications Inc. and Alltel Corporation*, Preservation of Assets Stipulation and Order, No.: 1:08-cv-01878 (EGS), U.S. District Court for the District of Columbia, October 30, 2008 at Section II.

<sup>19</sup> Final Judgment at p. 17.

competitor” that can compete effectively in the provision of retail mobile wireless telecommunications services in a market, such as Georgia, where it has never operated before.

ATN’s dearth of retail experience in the U.S. mobile marketplace should immediately disqualify it from being considered a “viable competitor” to entrenched rivals, each with tens of millions of customers, years of experience marketing and operating in varying markets of this country, and intimate knowledge of the unique attributes of the Georgia Cluster marketplace. Operating a retail-based network across tens of thousands of square miles, with no prior domestic, retail experience, is a tall order and ATN’s readiness to compete effectively on day one, let alone over time, remains highly suspect.<sup>20</sup> When confronted with questions concerning ATN’s capability to manage a thriving retail network in a market with the degree of competition it has never faced before, Applicants first contend that under this theory “the Commission could never approve a new entrant because such an entity would by definition ‘have no retail experience,’”<sup>21</sup> and second contend that ATN’s operational experience through its Commnet subsidiary more than compensates for its readily apparent deficiencies.<sup>22</sup> Neither argument is persuasive. This proceeding is unlike other assignment or transfer applications before the Commission. DOJ requires that a “viable competitor” inherit the mature assets slated for divestiture, and ATN’s credentials to-date show that it is anything but a viable competitor.

Similarly, the operational capabilities of Commnet are irrelevant, despite the geographic size of

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<sup>20</sup> Petition at p. 9. Applicants cite several cases for the proposition that allegations based upon speculation are unpersuasive and do not warrant a hearing. (Joint Opposition at p. 5, footnote 12) Unlike those cases, the Georgia Partners are not speculating as to what ATN will do; rather any “speculation” goes to what ATN is *capable* of doing (i.e. competing effectively). Because ATN has no domestic retail track record, any discussion of ATN’s ability to effectively compete in the domestic retail market must inevitably be based on projection drawn from ATN’s experience in its international markets and its inexperience in providing domestic retail service.

<sup>21</sup> Joint Opposition at p. 7.

<sup>22</sup> In their Joint Opposition, Applicants referenced a press release stating that ATN “will be adding over 450 Alltel employees.” (Joint Opposition at p. 7) The press release makes no mention of whether any of these former Alltel employees include persons with upper management or executive experience, nor does it mention any prospective officer, executive, director or manager by name.

the area it serves, because network operations and back-office administration are only small parts of the contributing factors leading to a successful and competitive retail wireless concern. Of greater importance is the ability to attract, and especially *retain*, retail customers. For this, sophisticated marketing and point-of-sale experience in the mobile industry is invaluable. Commnet, and ATN for that matter, have no retail experience in the United States.<sup>23</sup>

Should the Commission consider retail mobile experience *outside* of the United States as a reasonable substitute for domestic retail experience (in order to qualify ATN as a potential “viable competitor”), then special attention must be paid to the type of retail experience ATN has collected over the years. By its own admission, ATN touts Guyana as its longest-held and largest commercial mobile retail network. Yet, ATN’s subscriber base in Guyana is 95% pre-paid.<sup>24</sup> In contrast, Alltel’s average subscriber base is 89% *post-paid*.<sup>25</sup> The marketing, point-of-sale operations and econometrics of post-paid mobile and pre-paid mobile are completely different. ATN went from a monopoly to second-fiddle in Guyana with almost two decades of only *pre-paid* retail experience, and yet now it is imploring the Commission to view it as a “viable competitor” in the Georgia Cluster with essentially zero experience marketing to and operating a predominantly *post-paid* market in an entirely new country. The Commission should not allow ATN to acquire the Georgia Cluster and drive it into the ground due to its lack of post-paid market experience.

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<sup>23</sup> ATN claims to have “already entered the U.S. retail market through [Commnet’s] acquisition of a system in Nevada.” (Joint Opposition at p. 7, footnote 17) In truth, Commnet is only providing wholesale wireless service. All customers in this particular Nevada market will remain those of the acquired company. *See generally* ATNI Press Release [http://www.atni.com/pr\\_web.php?nd=081231&pr=01](http://www.atni.com/pr_web.php?nd=081231&pr=01) (last checked August 27, 2009) and Minutes of the Churchill County (NV) Board of County Commissioners [http://www.churchillcounty.org/commissioners/minutes/Minutes\\_April\\_2\\_2009\\_1.pdf](http://www.churchillcounty.org/commissioners/minutes/Minutes_April_2_2009_1.pdf) (last checked August 27, 2009).

<sup>24</sup> Joint Opposition at p. 9, footnote 19, part (2).

<sup>25</sup> ALLTEL Corp., 2007 Annual Report, Form 10-K (filed March 3, 2008) at p. 5.

**C. ATN Cannot Effectively Compete in the Georgia Cluster with a Roam-Only Strategy.**

Commnet, which ATN purchased in 2005, has no retail customers and derives all its revenue from a “roam-only” wholesale business model. In its Petition, the Georgia Partners drew the Commission’s attention to ATN’s growing dependency on Commnet as a stable revenue source for the entire company.<sup>26</sup> Of more concern to the Georgia Partners is Commnet’s frank admission that it plans to overlay the entire Georgia Cluster with a “roam-only” GSM network in order to squeeze additional revenue.<sup>27</sup> This crucial fact was not refuted by Applicants in their Joint Opposition. ATN’s silence on this matter speaks volumes. Overlaying a GSM network on top of the CDMA network will lead to less spectrum dedicated to subscribers in the Georgia Cluster. Spectrum is the lifeblood of a successful retail mobile network. Customer satisfaction, which is necessary to remain a viable competitor, hinges on an operator maximizing the resources available to it, including spectrum. Overlaying the Georgia Cluster with a second, “roam-only” network will harm the quality of service for all retail customers in the Georgia Cluster which will cause churn to other competing wireless carriers thereby harming competition and the public interest.

Applicants’ argument that select, prior instances of capital investment by ATN seamlessly translates into a future commitment to support retail initiatives in the Georgia Cluster is unpersuasive.<sup>28</sup> As mentioned above, DOJ requires that the acquiring entity have both the capability and the *intent* to operate as a viable competitor.<sup>29</sup> Possessing the ability to finance

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<sup>26</sup> Petition at p. 11.

<sup>27</sup> *Id.*

<sup>28</sup> Joint Opposition at p. 6, footnote 13.

<sup>29</sup> In their Petition, the Georgia Partners argued that Verizon’s divestiture to a weak competitor (ATN) was intentional. In response, Applicants argue that if Verizon had wanted to divest to a weak competitor it never would

large scale capital projects is not the same as demonstrating the willingness and fortitude to compete in a retail market for the long term. This hollow promise to compete effectively domestically, when combined with ATN's inability to compete effectively overseas and its apparent willingness to divert scarce spectrum resources away from subscribers, demonstrates that the public interest is not served by the Commission approving this transaction.

**II. BECAUSE VERIZON DOES NOT HAVE THE LEGAL ABILITY TO TRANSFER ITS OWNERSHIP INTEREST IN THE PARTNERSHIP, THE FCC SHOULD AT A MINIMUM HOLD THE APPLICATIONS IN ABEYANCE.**

The Applicants mischaracterize the Georgia Partners' request for the Commission to hold in abeyance a determination of whether Verizon has the legal ability to transfer its ownership interest in the Partnership. The precedent cited by the Applicants generally states that the Commission will not consider or adjudicate private disputes that are outside the Commission's jurisdiction. Indeed, the Georgia Partners' lawsuit is pending in federal court<sup>30</sup> to resolve claims of Alltel's violation of the right of first refusal provision. However, the Georgia Partners are not asking the Commission to consider or adjudicate these claims. Rather, the request is consistent with the Georgia Partners' assertions that Verizon's proposed license transfer is legally dubious

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have divested its initial batch of licenses to AT&T. The two divestitures are not comparable. Verizon's selection of AT&T as the acquirer for the initial 79 of those markets allowed Verizon to recoup a high bid price while dealing with only one party. Selling the remaining 26 markets to ATN at such a low price compared to AT&T's price is demonstrative of Verizon's desire to unload the divestiture assets to a party that would not be a viable competitor. Other parties filing petitions to deny raise serious issues regarding the integrity of the bidding process and each has asked the Commission to investigate the matter. (*See generally* Petition of The National Association of Black Owned Broadcasters, Inc. at p. 9; Petition of Telephone USA Investments, Inc. at p. 3, 8; Petition of Chatham Avalon Park Community Council at Appendix 1, p. 9). The FCC has a duty to investigate the fairness of the bidding process as part of its determination on whether Verizon conducted itself properly in choosing a viable competitor. The Georgia Partners suspect that the Commission will find that other parties were willing to pay Verizon more and that these bidders, unlike ATN, would have made effective competitors to Verizon.

<sup>30</sup> The Georgia Partners filed their Complaint in the Superior Court of Fulton County (Civil Action Number 09cv173298). On August 11, 2009, Defendant, Alltel, removed the case to the U.S. District Court for the Northern District of Georgia Atlanta Division (Civil Action File No. 09-CV-2186).

and is not in the public interest. Moving forward on an illegitimate transfer request would harm the Georgia Partners as well as the public interest as an inefficient use of private and public resources. Furthermore, allowing the federal court to fully consider the right of first refusal issue would allow the Commission to review a more complete record and facilitate any judicial review that may ultimately become necessary. The Commission has demonstrated its willingness to hold license applications in abeyance where questions of ownership exist and are being litigated<sup>31</sup> or during the pendency of a related Commission proceeding.<sup>32</sup> Accordingly, the Georgia Partners seek similar relief.

If the Commission is unwilling to hold the Applications in abeyance and should the Commission decide to grant the Applications, the Georgia Partners request that the Commission condition any such grant on the outcome of the Georgia federal district court's ruling on the merits. The Commission is authorized to condition the grant of an application on the outcome of a pending lawsuit or administrative proceeding so as to remove any possible impact on the litigants' interests.<sup>33</sup> Though this practice is infrequently invoked, including such a condition

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<sup>31</sup> See *Western Management Corporation; Application for Assignment of Authorization or Consent to Transfer of Control of Licensee for Call Signs WJN327, WPER274, WPET577 and WPAF615; Application for Renewal of Station WPER274; Applications for Modification of Stations WPAF615 and WPET577; Application for Cancellation of Station WPEK890*, FCC Form 490; FCC File No. R375195; FCC File Nos. D129494 and D129495; FCC Form 405A, Memorandum Opinion and Order, 16 FCC Rcd 840, 845 (WTB 2001) (holding in abeyance a license renewal application pending the outcome of state court litigation to determine questions of ownership).

<sup>32</sup> See *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands; Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz*, ET Docket No. 95-183 RM-8553; PP Docket No. 93-253, Notice of Proposed Rule Making and Order, 11 FCC Rcd 4930, 4989 (1995) (concluding that processing and disposition of license applications should be held in abeyance during the pendency of a related rulemaking proceeding).

<sup>33</sup> See, e.g., *Applications of Northwest Broadcasting, Inc., Assignor, and Western Pacific, Inc., Assignee, for Consent to Assignment of Station KKIC(AM), Boise, Idaho And Radio Broadcasting, Inc. Assignor And Capital West, Inc. Assignee For Consent To Assignment Of Station KJHY(FM), Emmett, Idaho*, File No. BAL-951011EA; File No. BALH-951011EB, Memorandum Opinion and Order, 12 FCC Rcd 3289, 3296 (1997) (placing an affirmative condition on an assignment grant to document the Commission's intent to await a court's final ruling on the merits); *Applications of Decatur Telecasting, Inc. for Modification of Construction Permit for Station KMPX(TV), Decatur, Texas; For Extension of Time to Construct Station KMPX(TV), Decatur, Texas; Decatur Telecasting, Inc. (Assignor) and Word Of God Fellowship, Inc. (Assignee), For Assignment of Construction Permit for Station*

would efficiently preclude the need for the Commission to review its decision to grant the Applications following any judicial findings to the contrary.

### III. CONCLUSION

For the foregoing reasons, the Georgia Partners respectfully request that the Commission deny the Applications or, in the alternative, designate them for hearing pursuant to 309(e) so that the Commission may resolve whether the proposed transfer to ATN serves the public interest as required by the Verizon/Alltel merger order. In the alternative, the Commission should hold the Applications (or, at a minimum, those in the Georgia Cluster) in abeyance pending judicial resolution of the issue of whether Verizon has the legal ability to transfer its ownership interest in the FCC licenses in the Georgia RSA 8 market to ATN or condition the grant of the Applications on the outcome of any judicial findings to the contrary.

Respectfully submitted,

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*KMPX(TV), Decatur, Texas*, File No. BMPCT-880616KE; File No. BMPCT-890614KG; File No. BAPCT-890303KM, Memorandum Opinion and Order, 7 FCC Rcd 8622, 8624 (MMB 1992) (stating it is the Commission's practice to condition the grant of an application on the outcome of a lawsuit so as to remove any possible impact on the litigants' interests); *Triad Cellular L.P. and GCC License Corporation for Consent to the Assignment of KNKN334, Market 652A; Texas RSA 1 – Dallam*, File No. 02555-CL-AL-97, Order, 12 FCC Rcd 17542, 17543 (WTB 2007) (expressly conditioning license assignment upon the outcome of an Application for Review proceeding).

## CERTIFICATE OF SERVICE

I, Linda Braboy, of Bennet & Bennet, PLLC, 4350 East West Highway, Suite 201, Bethesda, MD 20814, hereby certify that a copy of the foregoing Reply to Joint Opposition to Petition to Deny was served on this 27<sup>th</sup> day of August, 2009, by e-mail on those listed below:

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*/s/ Linda Braboy*

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