NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
www.ntca.org

August 7, 2009

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

***Ex Parte* Notice**

In re Application of Cellco Partnership d/b/a Verizon Wireless, Transferor and AT&T Inc., Transferee for Consent to the Transfer of Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 201(d) of the Communications Act, WT Docket No. 09-104, File Nos 0003840414, et. al.

Dear Ms, Dortch,

The National Telecommunications Cooperative Association ("NTCA") submits this *ex parte* letter[1] in support of those parties who ask the Commission to deny or condition consent of the application[2] of AT&T and Verizon Wireless (jointly, the "Nationwide Carriers") for consent to assign or transfer control of licenses and authorizations (the "Application") at issue in the above referenced proceeding.[3] Neither the Application nor the Opposition offered by the Nationwide Carriers refutes evidence that grant of the Application would be inconsistent with the public interest, convenience and necessity.

1 This proceeding is governed by permit-but-disclose ex parte procedures that are applicable to non-restricted proceedings under Sec. 1.1206 of the Commissions rules. *AT&T Inc. and Cellco Partnershiop d/b/a Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement,* Public Notice, WT Docket No. 09-104,, DA 09-1250 (rel June 19, 2009).
2 *See* filings of Rural Telecommunications Group (RTG), Cellular South, National Association of Black Owned Broadcasters, Inc, Sprint Nextel Corp., and Chatham Avalon Park Community Council.
3 *AT&T, Inc. and Cellco Partnership DBA Verizon Wireless Seek FCC Consent to Assign or Transfer Congrol of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, Pleading Cycle Established*, FCC Public Notice, DA 09-1350 (rel. June 19, 2009).

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NTCA represents the interests of about 580 rural incumbent local exchange carriers. The majority holds wireless licenses or otherwise offers wireless service in their rural territories. NTCA's members are deeply troubled by the competitive power wielded by the Nationwide Carriers and this country's steady progression toward a wireless duopoly.

The Nationwide Carriers argue that their proposed transaction "poses no threat to competition"[4] since it only serves to "replace" competition lost as a result of Verizon's purchase of ALLTEL. NTCA must respectfully, but vigorously disagree. Awarding the licenses to AT&T is not a substitute for the service previously provided by ALLTEL.[5] AT&T and ALLTEL are not similar in size, scope, or corporate philosophy. ALLTEL, as mid-sized carrier, was a trusted and loyal roaming partner of many small, rural wireless providers. ALLTEL depended on and needed small providers as much as small providers depended on and needed ALLTEL. There was a mutually beneficial relationship with bargaining power on both sides and a healthy competitive environment. AT&T is a nationwide provider with seemingly unlimited resources and little need for small competing carriers. AT&T has the ability and the will to drive small, rural carriers from the market and no incentive to enter into arrangements that will permit small, rural carriers to survive, much less thrive. Approval of this transaction, without significant safeguards, will most certainly negatively impact the financial stability and long-term viability of small CMRS providers.

4 National Carriers' Opposition, p. 4.
5 NTCA expressed its competitive concerns in its Petition to Deny the ALLTEL/Verizon Merger and requested that the Commission condition any approval on the requirement that Verizon not be permitted to sell the divested spectrum to another nationwide provider. NTCA Petition to Deny, *In re Applications of Atlantis Holdings, LLC, Transferor and Cellco Partnership d/b/a Verizon Wireless, Transferee for Consent to Transfer of Control of Commission Licenses and Authorizations Pursuant to sections 214 and 310(d) of the Communications Act,* WT Docket No. 08-95, File Nos 00034648, *et.al,* pp 6-7 (filed Aug. 11, 2008).

While this one transaction may seem relatively harmless on its face, looked at as part of the entire competitive landscape, it would be but one more nail in the coffin of non-nationwide wireless providers. The Nationwide Carriers keep growing through the acquisition of spectrum via auctions and mergers. Left unchecked, they have the ability and incentive to price service below cost and the will to engage in a competitively suspect manner. While the Nationwide Carriers argue that there exists "a sufficient number of competitors . . . to guard against unilateral exercise of market power,"[6] it is not true. In many markets, the only providers of CMRS service will be AT&T and Verizon.[7] The third competitor in those markets with a non-nationwide offering is typically a vulnerable small, rural telecommunications provider. The financial stability realized through the provision of service in urban markets will enable AT&T to subsidize rural operations and downward adjust prices to force small carriers out of the market. Small carriers only serve high cost areas and lack the luxury of being able to average in lower cost areas to keep prices below cost.

A variety of anticompetitive conditions exacerbates the problem, making the Nationwide Carriers very attractive to consumers. The Nationwide Carriers tout the increase in "the variety of wireless service and technology choices" the transaction would bring to the areas in question.[8] It is the anticompetitive handset exclusivity agreements between the Nationwide Carriers and manufacturers that ensure that only the Nationwide Carriers can offer that variety. The competitive advantage that Nationwide Carriers have in the ability to offer the latest technology to consumers years before the competition cannot be overstated. Prolific users of wireless service

6 *Application*, Description of Transaction, Public Interest Showing and Related Demonstrations, FCC Form 603, Exhibit 1 (filed June 5, 2009).
7 *See*, RTG Petition to Deny, p. 7.
8 Nationwide Carriers' Opposition, p. 5.

will change providers to acquire more advanced handsets Small rural CMRS providers will not survive if they lose their high-volume users to AT&T and Verizon.

Consumer behavior is also influenced by the ability to enjoy a seamless wireless experience. Small providers need roaming agreements with the Nationwide Carriers to compete. The in-market roaming exclusion and the lack of a requirement that carriers offer data roaming provides the Nationwide Carriers with all of the bargaining power and the ability to refuse to entertain any offer. New entrants and small competitors face an insurmountable disadvantage.

NTCA is firmly opposed to approval of the transaction. The Commission has a duty to preserve and enhance competition and approval of this transaction would run counter to that mandate. The potential public interest harms greatly outweigh the potential benefits.

Assuming *arguendo* that the Commission does approve the transaction, it must adopt safeguards to minimize the damage it would certainly inflict on small competitors. NTCA agrees that any approval of the applications must contain roaming conditions and elimination of handset exclusivity agreements.[9] The Commission has the authority to "impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction."[10] The Commission also has the ability to prescribe restrictions or conditions that may be necessary to carry out the provisions of the Communications Act and that are not inconsistent with the law.[11] If the Commission permits the transaction to proceed, at a minimum it should require that the Nationwide Carriers support data roaming at fair and reasonable rates, that the Nationwide Carriers support roaming in all markets including those where the requesting

9 RTG Petition to Deny, p. 11.
10 Verizon-ALLTEL Order at para 29.
11 47 U.S.C. Sec 303(r).

operator has licenses or spectrum rights, and prohibit the Nationwide Carriers from continuing to participate in handset exclusivity agreements.

For the foregoing reasons, NTCA respectfully requests that the Commission deny the above-captioned Applications. If the Commission chooses to grant the Applications, NTCA requests that he Commission condition the grant of the Applications as requested.

Sincerely,
/s/ Daniel Mitchell
Daniel Mitchell
Vice President, Legal and Industry

/s/ Jill Canfield
Jill Canfield
Senior Regulatory Counsel, Legal and Industry

cc: Chairman Julius Genachowski
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Commissioner Robert McDowell
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