

September 14, 2009

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 – 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

*Re: Application of Atlantic Tele-Network, Inc. and Verizon Wireless for Consent to  
Assign or Transfer Control of Licenses and Authorizations  
WT Docket No. 09-119  
Written Ex Parte Communication*

Dear Ms. Dortch:

This letter is submitted jointly by Atlantic Tele-Network, Inc. (“ATN”) and Celco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) to ensure the accuracy of the record in the above-referenced proceeding. As detailed below, this letter is necessitated by incorrect and misleading statements (including an inaccurate quotation of the Commission) contained in recent filings by Chatham Avalon Park Community Council (“CAPCC”), and jointly by Bulloch Cellular, Inc., Pineland Cellular, Inc., Planters Rural Cellular, Inc., and Plant Cellular RSA, Inc. (“the GA-8 Partners”).<sup>1</sup>

The CAPCC Reply alleges that “the Commission put Verizon Wireless on clear notice that it would be accountable for demonstrating that its divestiture transactions meet the Commission’s public interest standards, expressly including consideration of the Commission’s diversification policy as an element of that public interest showing.”<sup>2</sup> CAPCC bases this claim on what it asserts is a provision of the *Verizon-Alltel Order*.<sup>3</sup>

[T]he *Verizon-Alltel Order* specifically states that interested parties should wait until this proceeding to address questions concerning “the qualifications of the entity(ies) acquiring the Divestiture Assets and whether the specific transaction is in the public interest, *including diversity issues*.”<sup>4</sup>

However, the italicized words above – “including diversity issues” – are not part of the quoted sentence; nor do they appear anywhere in the *Verizon-Alltel Order*.<sup>5</sup> Indeed, the Commission specifically refused

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<sup>1</sup> See Reply of Chatham Avalon Park Community Council To Joint Opposition of Atlantic Tele-Network and Verizon Wireless, filed August 27, 2009 (“CAPCC Reply”) and Reply of Bulloch Cellular, Inc., Pineland Cellular, Inc., Planters Rural Cellular, Inc., and Plant Cellular RSA, Inc., filed August 27, 2009 (“GA-8 Partners Reply”).

<sup>2</sup> CAPCC Reply at 6.

<sup>3</sup> *Applications of Celco 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 (rel. Nov. 10, 2008) (“*Verizon-Alltel Order*”).

<sup>4</sup> CAPCC Reply at 6.

<sup>5</sup> The complete sentence from the *Verizon-Alltel Order*, quoted properly, reads as follows: “We remind the commenters that the qualifications of the entity(ies) acquiring the Divestiture Assets and whether the specific

to impose any ownership-related divestiture conditions on its approval of the Verizon-Alltel transaction and in no way suggested diversity issues would be relevant to any future analysis.<sup>6</sup> Accordingly, CAPCC's statement – and quotation of the Commission – is patently inaccurate.

The GA-8 Partners Reply also seeks to change the standard for Commission review by incorrectly adding an inappropriate element to the Commission's public interest analysis. According to GA-8 Partners, "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>7</sup> The GA-8 Partners recognize that the quoted language is from Verizon Wireless's court-approved settlement with the U.S. Department of Justice in the Alltel transaction, and not from the Commission's *Verizon-Alltel Order*, but they nonetheless claim that the Commission "is required" to make a determination as to ATN's "intent and capability" because of "the conditions placed on the licenses in question by the Verizon/Alltel merger approvals."<sup>8</sup> In fact, the Commission did not condition the transfer of the licenses proposed here on a determination by it as suggested by the GA-8 Partners. Nor did the Commission suggest in the *Verizon-Alltel Order* that the *Final Judgment* obligated it to consider the acquirer's "intent and capability" as part of its public interest analysis. To the contrary, the Commission recognized in the *Verizon-Alltel Order* that the buyer of divestiture assets "must be someone who, *in DOJ's sole judgment*, has the intent and capability of being an effective competitor to Verizon Wireless."<sup>9</sup>

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transaction is in the public interest will be evaluated when an application is filed seeking the Commission's consent to the transfer or assignment of the Divestiture Assets." *Verizon-Alltel Order*, 23 FCC Rcd 17444 at 17518 ¶162.

<sup>6</sup> *Id.* Instead, the Commission merely "encourage[d] 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." *Id.* Verizon Wireless plainly did so, as described in the Applicants' Joint Opposition. Joint Opposition of Atlantic Tele-Network, Inc. and Verizon Wireless to Petitions to Deny, at 11-24 (Aug. 20, 2009).

<sup>7</sup> GA-8 Partners Reply at 2, quoting *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 ("*Final Judgment*") at Section IV.H.

<sup>8</sup> GA-8 Partners Reply at 2.

<sup>9</sup> *Verizon-Alltel Order* at 17459 ¶24 (emphasis added). This is consistent with the terms of the *Final Judgment* itself, which orders that divestiture is to be made to an acquirer or acquirers that, "in plaintiff United States's sole judgment, upon consultation with the relevant plaintiff State, 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." *Final Judgment* at Section IV.H.

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In accordance with the Commission's rules, a copy of this letter is being filed in the Commission's Electronic Comment Filing System and associated with the above-referenced docket.

Sincerely,

Atlantic Tele-Network, Inc.

Cellco Partnership d/b/a Verizon Wireless

By: /s/ Jonathan V. Cohen  
Jonathan V. Cohen  
Wilkinson Barker Knauer, LLP  
2300 N Street, NW, Suite 700  
Washington, D.C. 20037  
*Its Attorney*

By: /s/ Nancy J. Victory  
Nancy J. Victory  
Wiley Rein LLP  
1776 K Street, NW  
Washington, D.C. 20006  
*Its Attorney*

cc: David S. Goldman  
Ruth Milkman  
Kathy Harris