

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

In the Matter of)	
)	
Applications of Verizon Wireless and AT&T Inc.)	DA 09-1978 WT Docket No. 09-121
)	
For Consent to Assign or Transfer Control of Licenses and Authorizations and Request a Declaratory Ruling on Foreign Ownership)	File Nos. 0003888722 <i>et al.</i>

**JOINT OPPOSITION OF
VERIZON WIRELESS AND AT&T INC. TO PETITION TO DENY**

Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) and AT&T Inc. (“AT&T”) demonstrated in the above-captioned applications that the proposed transaction will provide myriad public interest benefits and enhance competition in the delivery of mobile services. Only one Petitioner, Cellular South, Inc. (“Cellular South”), has opposed this transaction. Yet, in its Petition, Cellular South fails to refute the benefits of or demonstrate any harm to competition from this transaction. And, the few arguments it raises against the transaction are meritless. Accordingly, the Commission should dismiss or deny the Petition and grant the applications promptly and without conditions.¹

¹ The Commission also should dismiss the Petition for Expedited Reconsideration filed by Cellular South, Inc. *See* Petition for Expedited Reconsideration of Cellular South, Inc. (filed Sept. 29, 2009) (“Cellular South Ex Parte Petition”). The Commission rejected similar claims raised by Cellular South in the Verizon/ALLTEL merger proceeding and made clear that the Wireless Telecommunications Bureau has authority pursuant to Section 1.1200(a) of the Commission’s rules to assign the permit-but-disclose procedures to a merger proceeding. *Applications of Cellco P’ship d/b/a Verizon Wireless & Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations & Spectrum Manager & De Facto Transfer Leasing Arrangements & Petition for Declaratory Ruling That the Transaction Is Consistent with Section 310(b)(4) of the Commc’ns Act*, Memorandum Opinion and Order, 23 FCC Rcd. 17,444, 17,540-41, ¶¶ 219-20 (2008) (“*Verizon Wireless/ALLTEL Order*”). Cellular South also complains that

I. THE TRANSACTION WILL PRODUCE NUMEROUS PUBLIC INTEREST BENEFITS AND WILL NOT HARM COMPETITION.

Cellular South is not contesting the numerous, significant public interest benefits associated with the transaction. As Applicants demonstrated in the applications, Verizon Wireless will bring to consumers in five CMAs, where it currently has little or no presence, expanded choices of services and features, diverse rate plans, and handsets with advanced capabilities.² The transaction also will enable Verizon Wireless to expand network coverage and deploy 3G service, allowing it to better accommodate new subscribers and meet consumers' increasing demands for high-speed services and applications.³ It will permit consumers in these five CMAs to enjoy the benefits of vigorous competition among at least two – and often three or four – strong national competitors. These benefits are real, substantial, and consistently have been found by the Commission to satisfy the relevant public interest standard.⁴

the Commission's standard issuance of a protective order when it anticipates the filing of trade secrets or commercially or financially sensitive information violates the Freedom of Information Act, 5 U.S.C. § 552. *See* Cellular South Ex Parte Petition at 15-22. This practice, however, is fully consistent with the statute. The Commission's protective orders reflect a careful balancing between the public and private interests in protecting competitively sensitive information that is submitted to the Commission, on the one hand, and the due process rights of other parties and the interest of the public in access to information, on the other. *See Examination of Current Policy Concerning the Treatment of Confidential Info. Submitted to the Comm'n*, Report and Order, 13 FCC Rcd. 24,816, 24,823-24, 24,831-32, ¶¶ 9, 21-23 (1998).

² Description of the Transaction, Public Interest Showing, and Related Demonstrations, at 6-8 (filed June 30, 2009) ("Public Interest Statement").

³ *Id.* at 8.

⁴ *See, e.g., Verizon Wireless/ALLTEL Order*, 23 FCC Rcd. at 17,497-99, 17,502-04, 17,507-09, 17,515, ¶¶ 119, 122-23, 128-32, 136, 140-42, 156; *Applications of Cellco P'ship d/b/a Verizon Wireless & Rural Cellular Corp. for Consent to Transfer Control of Licenses, Authorizations & Spectrum Manager Leases & Petitions for Declaratory Ruling That the Transaction Is Consistent with Section 310(b)(4) of the Commc'ns Act*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd. 12,463, 12,504-12, ¶¶ 91-109 (2008); *Applications of AT&T Inc. & Dobson Commc'ns Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd. 20,295, 20,332-33, 20,335, ¶¶ 78-79, 84 (2007); *Applications of Midwest Wireless Holdings, L.L.C. & ALLTEL Commc'ns, Inc. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 21 FCC Rcd. 11,526, 11,564, 11,566, 11,568, ¶¶ 105, 110, 116-18 (2006);

Applicants also demonstrated in the applications that the transaction poses no threat to competition.⁵ The wireless industry is highly competitive, and this transaction will not diminish that vigorous competition. Indeed, post-transaction, Verizon Wireless' spectrum holdings in areas affected by the transaction will be well below the applicable spectrum screen in all counties.⁶ Cellular South even admits that "there is little doubt that VZW would become a more vibrant competitor" as a result of this transaction.⁷ As such, the Commission should expeditiously approve the proposed transaction.

II. CELLULAR SOUTH'S CLAIMS ARE MERITLESS.

Cellular South raises a number of claims that need not detain the Commission from quickly completing a diligent review of the proposed transaction. As an initial matter, Cellular South improperly alleges that Verizon Wireless has not complied with a roaming condition in the FCC's Order approving the transfer of licenses in connection with the merger of Verizon Wireless and ALLTEL. It also complains about alleged harms regarding exclusive handset arrangements that are not transaction-specific. Finally, Cellular South distorts the facts and the rules to urge the Commission to conduct a wholly needless anti-trafficking investigation. Each of these claims lacks merit and/or is irrelevant to this proceeding and should be rejected at the outset.

Applications of Nextel Commc'ns, Inc. & Sprint Corp. for Consent to Transfer Control of Licenses & Authorizations, Memorandum Opinion and Order, 20 FCC Rcd. 13,967, 14,015-16, ¶¶ 132-36 (2005); *Applications of W. Wireless Corp. & ALLTEL Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13,053, 13,102-06, 13,111-12, ¶¶ 138-43, 158 (2005); *Applications of AT&T Wireless Servs., Inc. & Cingular Wireless Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd. 21,522, 21,599-609, 21,611, ¶¶ 202-203, 207-229, 236 (2004) ("*Cingular/AT&T Wireless Order*").

⁵ Public Interest Statement at 9.

⁶ *Id.* at 9, Exhibit 3 at 1.

⁷ Cellular South Petition to Deny at 2.

A. Cellular South's Roaming Claim Is Not Relevant to This Transaction and Is Not Accurate.

As an initial matter, Cellular South's claim relates to a prior transaction and different CMAs that have nothing to do with the proposed transaction. Indeed, customers of Cellular South, a CDMA carrier, cannot roam on Centennial's GSM network in the territory covered by the proposed transaction and, thus, cannot suffer any roaming-related harm. To the extent that Cellular South believes Verizon Wireless is not complying with the *Verizon Wireless/ALLTEL Order's* condition, Cellular South's recourse is to file a complaint with the Commission, not to object to an unrelated transaction.⁸

Cellular South mischaracterizes the status of its roaming relationship with Verizon Wireless and the ongoing work to implement data roaming in the former ALLTEL properties. Cellular South claims that Verizon Wireless has not complied with a roaming condition contained in the Commission's Order approving the Verizon Wireless/ALLTEL merger.⁹ In that transaction, Verizon Wireless voluntarily committed to give each "regional, small and/or rural carrier that currently has roaming agreements with both ALLTEL and Verizon Wireless . . . the option to select either agreement to govern all roaming traffic between it and post-merger Verizon Wireless."¹⁰ Contrary to Cellular South's assertion, Verizon Wireless has done precisely this. Upon receiving Cellular South's election that it would like the existing Verizon

⁸ As the Commission has previously stated, allegations about past violations of Commission rules or orders "are more appropriately addressed via the Commission's complaint process," not as part of the review of a transaction. *See, e.g., AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, ¶ 120 n. 342 (2007); *Verizon Commc'ns Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18,433, ¶ 191 n. 517 (2005) (declining to address issues that were the subject of pending complaint proceedings).

⁹ *Id.* at 4-6.

¹⁰ *Verizon Wireless/ALLTEL Order*, 23 FCC Rcd. at 17,455, ¶ 15.

Wireless/Cellular South agreement to govern all roaming traffic between the two companies, Verizon Wireless has repeatedly communicated to Cellular South and its counsel that Verizon Wireless has accepted Cellular South's election.¹¹

Indeed, Verizon Wireless is currently working with Cellular South to implement data roaming in the former ALLTEL territory.¹² Currently, Verizon Wireless is waiting for Cellular South to determine which deployment path it prefers (*i.e.*, 1xRTT via MIP or 1xRTT via L2TP). Even once this determination is made, implementing data roaming in the former ALLTEL territory cannot occur overnight and involves significant time and resources to integrate and upgrade both the Cellular South and the former ALLTEL networks to support data roaming – a complex task that is being implemented in stages by geographic service area to ensure minimum customer disruption and typically requires several months to complete each phase. In particular, before data roaming can occur, Verizon Wireless and Cellular South must exchange technical information, make changes to their networks to allow for the flow of data between the two networks, perform testing, review billing records, and launch service. At the same time, Verizon Wireless also has been working to consolidate the former ALLTEL system into its network, to complete several other roaming projects, and to implement numerous other carriers' roaming

¹¹ Cellular South also asserts that Verizon Wireless has delayed responding to its requests to extend the current automatic roaming agreement for voice and data services between Verizon Wireless and Cellular South. Cellular South Petition to Deny at 5. Verizon Wireless, however, committed in writing to extend this agreement in December 2008. Immediately upon learning that this commitment was insufficient from Cellular South's perspective, Verizon Wireless took steps to formalize this commitment by sending to Cellular South an amendment that extends this agreement until February 14, 2014. Cellular South has indicated to Verizon Wireless that it has now signed this amendment. As soon as Verizon Wireless receives it, the amendment will be signed and the agreement will be formally extended until 2014. In any event, the *Verizon Wireless/ALLTEL Order* did not require Verizon Wireless to extend its roaming agreements with any carriers and Cellular South's allegations are thus irrelevant to this proceeding and groundless.

¹² The ALLTEL-Cellular South roaming agreement did not cover data roaming.

elections. As a result, despite proceeding diligently, Verizon Wireless and Cellular South have not yet been able to complete all of the steps necessary to implement Cellular South's election. In any event, Verizon Wireless is actively working with Cellular South to provide it with data roaming on the ALLTEL network as soon as possible. In short, Verizon Wireless is honoring Cellular South's election and is proceeding conscientiously to take the steps to make that happen.

B. Under Well-Established Policies, the Petitioner's Attempt to Raise Issues That Are Not Transaction-Specific Must Be Rejected.

Cellular South also raises concerns regarding Applicants' exclusive handset arrangements.¹³ This argument ignores the Commission's longstanding policy of "not consider[ing] arguments in [transaction] proceeding[s] that are better addressed in other Commission proceedings"¹⁴ and of not "impos[ing] conditions to remedy pre-existing harms or harms that are unrelated to the transaction."¹⁵ Indeed, the issue of exclusive handset agreements has already been raised in multiple proceedings. In those proceedings, Applicants have explained why prohibitions on such arrangements are both unnecessary and harmful to consumers.¹⁶

¹³ Cellular South Petition to Deny at 6-8.

¹⁴ *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, 5904, ¶ 123 (1994), *aff'd sub nom., SBC Commc'ns, Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995).

¹⁵ *See, e.g., Verizon Wireless/ALLTEL Order*, 23 FCC Rcd. at 17,463, ¶ 29; *Sprint/Nextel Order*, 20 FCC Rcd. at 13,979, ¶ 23; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21,545-46, ¶ 43.

¹⁶ *See, e.g., Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers & Handset Mfrs.*, RM-11497, Comments of Verizon Wireless (filed Feb. 2, 2009), Reply Comments of AT&T Inc. (filed Feb. 20, 2009), Comments of AT&T Inc. (filed Feb. 2, 2009); *In re Wireless Telecomms. Bureau Seeks Comment on Commercial Mobile Servs. Mkt. Competition*, WT Dkt No. 09-66, Comments of Verizon Wireless at 14-18 (filed June 15, 2009), Comments of AT&T Inc. at 54-59 (filed Sep. 30, 2009), Reply Comments of AT&T Inc. at 32-42 (filed July 13, 2009), Comments of AT&T Inc. at 35-36 (filed June 15, 2009); *Fostering Innovation and Investment in the Wireless Communications Mkt., A National*

Moreover, Cellular South's proposed relief of imposing a prohibition on exclusive handset arrangements on the Applicants alone, under the guise of a unilateral transaction condition, would harm the public interest. Specifically, it would constrain Applicants' ability to compete with other licensees not so constrained¹⁷ as well as discourage Applicants from investing in the development of new and innovative devices, to the ultimate detriment of consumers. The Commission should summarily dismiss this claim, which is unrelated to the transaction under review, and consider it, if at all, in industry-wide proceedings where the Commission "will be able to develop a comprehensive approach based on a full record."¹⁸

C. The Transaction Does Not Raise Trafficking Issues

Finally, nothing in the Communications Act, the Commission's rules or any precedent supports Cellular South's claim that these applications "must be reviewed for trafficking" and that "AT&T must be required to disclose in accordance with § 1.948(i)(2) of the Rules whether

Broadband Plan for Our Future, GN Dkt Nos. 09-157, 09-51, Comments of AT&T Inc. at 64-65 (filed Sep. 30, 2009).

¹⁷ T-Mobile, for example, recently announced that the Motorola CLIQ with MOTOBLUR will be exclusively available to T-Mobile customers. T-Mobile Announces Upcoming Availability of Motorola CLIQ with MOTOBLUR, T-Mobile Press Release, Sept. 29, 2009, at http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20090929&title=T-Mobile%20Announces%20Upcoming%20Availability%20of%20Motorola%20CLIQ%20with%20MOTOBLUR (last visited Oct. 9, 2009). Sprint similarly is the exclusive provider of the Palm Pre smartphone. Marin Perez, Sprint CEO: Exclusivity Periods Should Be Questioned, *Information Week*, Sept. 18, 2009, at <http://www.informationweek.com/news/mobility/business/showArticle.jhtml?articleID=220001119> (last visited Oct. 9, 2009).

¹⁸ *SBC Commc'ns Inc. & AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18,290, 18,320, ¶ 55 (2005); *see also Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21,592, ¶ 183. To the extent the Commission determines, despite clear precedent to the contrary, to consider this issue in this proceeding, the Commission should quickly dismiss it as meritless. Pleadings filed by Verizon Wireless and AT&T in the relevant rulemaking proceedings, which the Applicants hereby request to incorporate in this proceeding by reference, clearly demonstrate why the requested change is contrary to the public interest.

the sale price for the 5 markets will allow it to profit from resale of the licenses to VZW.”¹⁹

“Commission review for the purposes of determining whether trafficking has occurred is *discretionary*.”²⁰ The Commission has no reason to exercise this discretion here. AT&T is not acquiring these authorizations “for the principal purpose of speculation or profitable resale.”²¹

Rather, it made an agreement to acquire an entire company, which of necessity included all of its FCC authorizations, including those that are the subject of these applications. Its decision to sell these authorizations to Verizon Wireless was not for the purpose of profiting from the resale, but rather was prompted by issues raised in the antitrust review of the transaction and was an effort to expedite regulatory approval. In any event, the anti-trafficking rules are not aimed at subsequent sales of *constructed facilities acquired at a market price*²² as is the case here.

Because AT&T is acquiring these authorizations for market value and its proposal to resell them is solely a product of its attempt to facilitate approval of the merger,²³ the Commission should reject Cellular South’s argument that AT&T’s sale of these assets constitutes license trafficking.

¹⁹ Cellular South Petition at 9-10, n. 22 (emphasis added).

²⁰ *Verizon Wireless/ALLTEL*, 23 FCC Rcd. at 17,536, ¶ 209 (emphasis added).

²¹ 47 C.F.R. § 1.948(i)(1) (defining trafficking).

²² *See Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Comm’n’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Serv. & Other Commercial Mobile Radio Servs.*, Report and Order, 17 FCC Rcd 18,401, 18,437, ¶ 72 (2002) (stating that the antitrafficking rules seek “to deter insincere applicants from speculating on *unbuilt* facilities.”) (emphasis added); *cf. In re Forbearance from Applying Provisions of the Communications Act to Wireless Telecomms. Carriers*, First Report and Order, 15 FCC Rcd. 17,414, 17,429, ¶ 33 (2000) (“[R]equiring initial licensees to pay market value for their authorizations[] effectively safeguards against such speculation.”).

²³ On October 13, 2009, the DOJ filed a Complaint and Preservation of Assets Stipulation and Order with the United States District Court for the District of Columbia, and the DOJ, AT&T and Centennial jointly filed a proposed Final Judgment with the court, which among other things calls for the divestiture of the five CMAs that are the subject of this transaction. Proposed Final Judgment, *United States v. AT&T Inc. and Centennial Communications Corp.*, Civil Action No. 09-1932 (D.D.C. filed Oct. 13, 2009).

III. CONCLUSION

For the foregoing reasons, the Commission should dismiss or deny Cellular South's Petition to Deny the instant transaction. Applicants have clearly demonstrated that the proposed transaction serves the public interest, convenience, and necessity. Accordingly, the Commission should expeditiously grant the above-captioned applications without conditions.

Respectfully submitted,

VERIZON WIRELESS

AT&T INC.

By: /s/ John T. Scott, III
John T. Scott, III
Michael Samscock
Verizon Wireless
1300 Eye Street, NW
Suite 400 West
Washington, DC 20005
Telephone: (202) 589-3740

By: /s/ William R. Drexel
William R. Drexel
John J. O'Connor
G. Troy Hatch
Elefteris Velesiotis
AT&T Inc.
208 South Akard Street
Room 3504
Dallas, TX 75202
Telephone: (214) 757-3350

Gary L. Phillips
Michael P. Goggin
AT&T Inc.
1120 Twentieth Street, NW, Ste. 1000
Washington, DC 20036
Telephone: (202) 457-3055

Of Counsel:

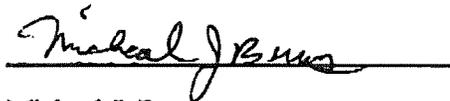
Nancy J. Victory
Catherine M. Hilke
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
Telephone: (202) 719-7000

Arnold & Porter LLP
555 Twelfth Street, NW
Washington, DC 20004
Telephone: (202) 942-6060

October 13, 2009

DECLARATION OF MICHAEL J. BURNS

I, Michael J. Burns, am the Director of Roamer Services for Verizon Wireless. I hereby declare under penalty of perjury that I am qualified to speak on behalf of Verizon Wireless. I have reviewed the preceding Joint Opposition to Cellular South's Petition to Deny submitted on behalf of Verizon Wireless and AT&T Inc., and the factual statements therein regarding Verizon Wireless' operations and activities contained in Section II.A "Cellular South's Roaming Claim Is Not Relevant to This Transaction and Is Not Accurate" are true and correct to the best of my knowledge, information, and belief.

A handwritten signature in cursive script, reading "Michael J. Burns", is written over a solid horizontal line.

Michael J. Burns
Director, Roamer Services
Verizon Wireless

Executed on: October 13, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this thirteenth day of October, 2009, I caused true and correct copies of the foregoing Joint Opposition of Verizon Wireless and AT&T Inc. to Cellular South's Petition to Deny to be served by electronic mail and/or hand delivery upon:

Best Copy and Printing, Inc.*
445 Twelfth Street, SW
Room CY-B402
Washington, DC 20554

David Krech*
Policy Division
International Bureau
445 Twelfth Street, SW
Room 7-A664
Washington, DC 20554

Kathy Harris*
Mobility Division
Wireless Telecommunications Bureau
445 Twelfth Street, SW
Room 6338
Washington, DC 20554

Jim Bird*
Office of General Counsel
445 Twelfth Street, SW
Room 8-C824
Washington, DC 20554

Stacy Ferraro*
Spectrum and Competition Policy
Division
Wireless Telecommunications Bureau
445 Twelfth Street, SW
Room 6528
Washington, DC 20554

Neil Dellar*
Office of General Counsel
445 Twelfth Street, SW
Room 8-C818
Washington, DC 20554

Linda Ray*
Broadband Division
Wireless Telecommunications Bureau
445 Twelfth Street, SW
Room 3-A-160
Washington, DC 20554

Russell D. Lukas**
David L. Nace**
Lukas, Nace, Gutierrez & Sachs, LLP
1650 Tysons Blvd., Suite 1500
McLean, VA 22102

* By electronic mail

** By electronic mail and hand delivery

/s/ Catherine M. Hilke

Catherine M. Hilke