

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

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

To: The Commission

**APPLICATION FOR REVIEW
OF
THE NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, INC.**

The National Association of Black Owned Broadcasters, Inc. (“NABOB”), by its attorneys, pursuant to Section 1.115 of the Commission’s Rules, 47 CFR §1.115, hereby submits its Application for Review of the Memorandum Opinion and Order of the Chief, Wireless Telecommunications Bureau and Chief, International Bureau, *Application of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless*, DA 10-661,¹ released April 20, 2010, granting the above-captioned application of Cellco Partnership d/b/a Verizon Wireless (“VZW”) to assign and transfer control of licenses and authorizations to Atlantic Tele-Network, Inc. (“ATN”), from the assets of ALLTEL, Inc. (“ALLTEL”)(the “MO&O”).

¹ The Bureaus issued two copies of the MO&O; one copy included information the applicants assert to be confidential, and the other copy has that material redacted. In this Application for Review, all references will be to the redacted copy of the MO&O.

I. SUMMARY

NABOB submits that this Application for Review should be granted, because the MO&O: (1) conflicts with the Commission's statutory obligation under Sections 257, 309(i)(3), 309(j)(3)(B) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 257, 309(i)(3), 309(j)(3)(B) and 310(d), to promote diversity of ownership of telecommunications facilities, promote ownership by minorities, and to grant an application only if it serves the public interest, (2) involves a question of law and policy which the Commission has not previously resolved, which is the obligation of VZW to create mechanisms to assist minorities to acquire the Divestiture Assets, and (3) and made erroneous findings as to an important and material question of fact when it found that VZW's conduct and interactions with potential bidders were in keeping with the *Verizon Wireless-ALLTEL Order*.

NABOB submits that the Commission must: (1) grant this Application for Review, (2) comply with its statutory obligation to promote diversity of ownership of telecommunications facilities and ownership by minorities, (3) rule on the question of VZW's obligation to create mechanisms to assist minorities to acquire the Divestiture Assets, as specified in the *Verizon Wireless-ALLTEL Order*, and (4) reverse the finding by the Bureaus that VZW complied with the *Verizon Wireless -ALLTEL Order*. Upon reversing the MO&O, the Commission should direct VZW to conduct a bidding process consistent with the Commission's direction in the *Verizon Wireless-ALLTEL Order* or, in the alternative, the Commission should designate the Application for hearing. NABOB files this Application for Review to bring to the Commission's attention the errors in the Bureaus' analysis of the VZW-ATN transaction. As shall be demonstrated below, these errors in the analysis leave the MO&O in conflict with the Commission's statutory obligation to promote

diverse ownership in the telecommunications industry, involve a question of law and policy which has not previously been resolved by the Commission, and involve an erroneous finding as to an important and material question of fact. The MO&O should be reversed and VZW should be directed to conduct a bidding process that complies with the Commission's *Verizon Wireless-ALLTEL Order*, or the application should be designated for hearing.

II. ISSUES FOR REVIEW

Section 1.115 of the Commission's Rules permits the filing of an application for review of an action taken on delegated authority if the action: (1) is in conflict with statute, regulation, case precedent, or established Commission policy, (2) involves a question of law or policy which has not previously been resolved by the Commission, (3) involves application of a precedent or policy which should be overturned or revised, (4) involves an erroneous finding as to an important or material question of fact, or (5) involves procedural error.

NABOB submits that review is required here because:

- (1) the MO&O is in conflict with the Commission's statutory duty under Sections 257, 309(i)(3), 309(j)(3)(B), and 310(d) of the Communications Act to promote diversity of ownership of telecommunications facilities and to grant applications only if they serve the public interest;
- (2) the MO&O involves a question of law and policy which the Commission has not previously resolved. That question is: What is the meaning of the Commission's directive to VZW when it concluded that, "Although we decline to impose specific conditions regarding the potential acquirers of and methods for selling the Divestiture Assets, we 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?”

- (3) the MO&O erroneously found that VZW’s conduct and interactions with potential bidders were in keeping with the *Verizon Wireless-ALLTEL Order*. In finding the VZW bidding process for selling the Divestiture Assets consistent with the *Verizon Wireless-ALLTEL Order*, the Bureaus failed to recognize that, if VZW had communicated to all bidders that it would be willing to accept a sale price for the Remaining Divestiture Assets that provided a 88% discount from the fair market value, several minority bidders could have obtained committed financing very quickly and easily.

For the reasons set forth below, NABOB requests that the Commission review and set aside the holdings in the MO&O, address the issues raised in this proceeding, and designate the application for hearing.

III. BACKGROUND

NABOB is the only trade association representing the interests of the 240 African American owned radio stations and 14 African American owned television stations in the United States. Founded in 1976, one of NABOB’s principal objectives has been to promote minority ownership of telecommunications facilities. NABOB submits 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. But, unless the Commission denies the instant transaction, the Commission will allow ATN and VZW to completely undermine the Commission’s policy of promoting minority ownership.

Promotion of diversity of ownership in the telecommunications industry has been an important Commission policy for decades.² The policy is based upon the recognition that the control of the airwaves should be distributed among many different voices so that the voices of all segments of society, including those of racial minorities, can be heard.³ In recent years, the convergence of technologies has broadened the telecommunications platforms from which the public receives the expression of ideas and information. As a result, Congress and the Commission have broadened their efforts to expand minority ownership opportunities to all telecommunications services.⁴

Broadband technologies increasingly are delivering news, information and entertainment to the American public. In recognition of this fact, Congress directed the Commission to develop a national broadband policy.⁵ Wireless broadband services will be an important part of the national broadband network, and the licenses and authorizations being transferred by VZW will be an important part of the broadband assets utilized by the carrier that acquires the Divestiture Assets.

Members of NABOB are seeking to become owners of wireless services that will be part of the national broadband network. In particular, some members of NABOB bid to acquire the Divestiture Assets. Therefore, NABOB has vital interests in the proposed disposition of the Divestiture Assets and in the Commission's policies that will impact diversity of ownership in the wireless industry.

² *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, par. 2.

³ *Id.*

⁴ *See*, 47 USC §§257, 309(i)(3) and 309(j)(3)(B).

This proceeding evolved from the application of VZW for Commission approval of the transfer of the licenses, authorizations, spectrum manager and leasing arrangements of ALLTEL.⁶ In the VZW-ALLTEL proceeding, the Commission issued the *Verizon Wireless-ALLTEL Order*, ordering the applicants to divest all of the licenses and other assets of one of the applicants in 100 markets (the “Divestiture Assets”). The Commission ordered the divestitures, because it determined that, upon the acquisition of ALLTEL, VZW would have too much market power in the divestiture markets, and it was “likely the merged entity could behave in an anticompetitive manner because of its high combined market share.”⁷

In the VZW-ALLTEL proceeding, several parties requested that the Commission place constraints upon the parties to whom the applicants could sell the Divestiture Assets. Several commenters specifically requested that the applicants not be permitted to sell the Divestiture Assets to another nationwide wireless provider.⁸ In addition, one commenter, Chatham Avalon Park Community Council, requested that the Commission order the applicants to make an effort to sell the Divestiture Assets to companies controlled by minorities or members of socially disadvantaged groups.⁹

⁵ *Connecting America: The National Broadband Plan*, released March 16, 2010.

⁶ *Application of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings, LLC for Consent to Transfer Control of Licenses, Authorizations, Spectrum Manager, and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, 23 FCC Rcd 17444 (2008)(the proceeding is referred to herein as the “VZW-ALLTEL” proceeding, and the order issued is referred to as the “*Verizon Wireless-ALLTEL Order*”).

⁷ *Verizon Wireless-ALLTEL Order* at par. 103.

⁸ *Id.* at par. 160.

⁹ *Id.*

In the *Verizon Wireless-ALLTEL Order*, the Commission declined to place any restrictions on the acquirer that would limit the size or other attributes of any potential acquirer. However, the Commission noted that “the qualifications of the entity(ies) acquiring the Divestiture Assets and whether the specific 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.”¹⁰ The Commission then added, “[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.”¹¹

After the Commission issued its *Verizon Wireless-ALLTEL Order*, VZW announced a formal bidding process in which the public was advised that any party interested in bidding for some or all of the Divestiture Assets could participate in the bidding process.

IV. THE MO&O CONFLICTS WITH THE COMMISSION’S STATUTORY OBLIGATION TO PROMOTE DIVERSITY OF OWNERSHIP OF TELECOMMUNICATIONS FACILITIES AND TO GRANT APPLICATIONS ONLY IF THEY SERVE THE PUBLIC INTEREST

The Commission must conduct its review of this transaction, pursuant to Sections 214(a) and 310(d) of the Communications Act, to determine whether the applicants have met their burden to demonstrate by a preponderance of the evidence that the transaction “will serve the public interest, convenience and necessity.”¹² The Commission’s public interest evaluation encompasses the “broad aims of the Communications Act” which includes “a deeply rooted preference for preserving and

¹⁰ *Id.* at par. 162.

¹¹ *Id.* at par. 162.

¹² *Id.* at par. 26.

enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.”¹³ If the Commission is “unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, [the Commission] must designate the application for hearing under section 309(e) of the Communications Act.”¹⁴

As part of its public interest evaluation, the Commission must determine whether the transaction is consistent with the Commission’s statutory obligations under other provisions of the Communications Act. Among the other provisions of the Act which are implicated by this transaction are Sections 257, 309 (i)(3), and 309(j)(3)(B).

Section 257 provides in pertinent part:

(a) Elimination of Barriers.--Within 15 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this Act (other than this section), market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.

(b) National Policy.--In carrying out subsection (a), the Commission shall seek to promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity. (emphasis added)

¹³ *Id.* at par. 27.

¹⁴ *Id.* at 26, citing, e.g., *Application of EchoStar Communications Corporation (A Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (A Delaware Corporation) (Transferee)*, CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Red 20559, 20620, par. 153 (2002)(“EchoStar Hearing Designation Order”).

Section 309(i)(3) provides:

(3)(A) The Commission shall establish rules and procedures to ensure that, in the administration of any system of random selection under this subsection, used for granting licenses or construction permits for any media of mass communications, significant preferences will be granted to applicants or groups of applicants, the grant to which of the license or permit would increase the diversification of ownership of the media of mass communications. To further diversify the ownership of the media of mass communications, an additional significant preference shall be granted to any applicant controlled by a member or members of a minority group.¹⁵

(C) For purposes of this paragraph:

(i) The term "media of mass communications" includes television, radio, cable television, multipoint distribution service, direct broadcast satellite service, and other services, the licensed facilities of which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee.

(ii) The term "minority group" includes Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders. (emphasis added)

Section 309(j)(3)(B) provides:

(j) Use of Competitive Bidding. -

(1) General authority.--If, consistent with the obligations described in paragraph (6)(E), mutually exclusive applications are accepted for any initial license or construction permit, then, except as provided in paragraph (2), the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection.

¹⁵ Section 309(i) does not explicitly indicate that the wireless licenses involved in the instant transaction are subject to that section. However, the clear national policy to promote minority ownership is demonstrated by Section 309(i)(3). Moreover, as the Commission is well aware, wireless providers now operate "licensed facilities ... which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee." Therefore, the Commission should regulate the transaction in this proceeding as one covered by Section 309(i)(3).

(3) Design of Systems of Competitive Bidding. - ... In identifying classes of licenses and permits to be issued by competitive bidding, in specifying eligibility and other characteristics of such licenses and permits, and in designing the methodologies for use under this subsection, the Commission shall include safeguards to protect the public interest in the use of the spectrum and shall seek to promote the purposes specified in Section 1 of this Act and the following objectives:

(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;

(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women; (emphasis added)

Collectively, Sections 257, 309(i)(3) and 309 (j)(3)(B) demonstrate an extensive Congressional intent requiring the Commission to promote diverse ownership of telecommunications facilities by small businesses and businesses owned by minorities. The Commission may not ignore such statutory obligations.

As NABOB shall demonstrate below, the proposed transaction will do serious damage to the Commission's statutory duty to promote diversity of ownership in the telecommunications industry and fails to demonstrate that other public interest benefits will offset this damage to diversity of ownership. Therefore, the Commission must deny the application or designate it for hearing, pursuant to Section 309(e) of the Communications Act.¹⁶

V. THE MO&O ERRONEOUSLY MAKES A DETERMINATION OF LAW AND POLICY WHICH THE COMMISSION HAS NOT PREVIOUSLY RESOLVED

As pointed out above, when the Commission directed VZW to sell the Divestiture Assets, the Commission declined to specify to whom the Divestiture Assets should be sold. However, the

¹⁶ EchoStar Hearing Designation Order, *supra*. at 20620.

Commission noted that “the qualifications of the entity(ies) acquiring the Divestiture Assets and whether the specific 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.”¹⁷ The Commission then added, “[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.”¹⁸

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 Inc. (“AT&T”) was prearranged, and has 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 requested that the VZW-AT&T Application be denied, or designated 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.

The instant transaction seeks to assign or transfer the remaining Divestiture Assets not sold to AT&T (the “Remaining Divestiture Assets”). Because the instant transaction is related to the transaction in WT Docket No. 09-104, and might not be consummated by the applicants if that transaction is not consummated, the Commission should consider the issues raised in the proceedings

¹⁷ *Verizon Wireless-ALLTEL Order* at par. 162.

¹⁸ *Id.* at par. 162.

together. For the reasons set forth in its Petition to Deny in WT Docket No. 09-104, and for additional reasons set forth below, the Commission should deny the instant Application or, alternatively, designate it for a hearing along with the application in WT Docket No. 09-104.

Shortly after the announced sale of the vast majority of the Divestiture Assets to AT&T, VZW announced the sale of the Remaining Divestiture Assets to ATN. Aside from the serious issues raised by the VZW-AT&T transaction, the VZW-ATN transaction also raises issues. In the MO&O, the Bureaus failed to recognize the issues raised by the transaction. In the MO&O, the Bureaus concluded that:

While it is possible that Verizon Wireless could have taken more steps to aid minority-owned entities seeking to participate in the bidding, we must evaluate these applications in accordance with the relevant language in the Commission's *Verizon Wireless-ALLTEL Order*. We find that Verizon Wireless's conduct and interactions with potential and actual bidders were in keeping with that language. In future transactions, the Commission may consider providing more detailed guidance about those specific steps, such as flexibility in divestiture goals and in financing commitment requirements, that divesting entities can take to encourage new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups to acquire Commission-ordered divestiture assets.¹⁹

In reaching this conclusion, the Bureaus failed to recognize that they were making a major ruling of law and policy which the Commission has not previously resolved. Specifically, the Bureaus ruled on the meaning of the Commission's statement 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." In the MO&O, the Bureaus

¹⁹ MO&O at par. 50.

interpreted this statement to be no more than a few words of encouragement.²⁰ However, a reading of the words demonstrates that the Commission requested VZW to consider and “implement” “mechanisms” “to assist” minorities in “acquiring” the Divestiture Assets. As shall be described below, VZW did not implement any mechanisms to assist minorities in acquiring the Divestiture Assets. To the contrary, VZW applied the same mechanisms that it has used to divest of other assets.

When the Commission encouraged VZW to implement mechanisms to assist minorities to acquire the Divestiture Assets, the Commission was well aware that VZW has sold assets in the past. It was aware that in such transactions, VZW has done business with entities that could demonstrate committed financing at the outset. The Commission was also aware that for minority owned companies, financing is the largest market entry barrier. It is therefore reasonable to conclude that, when the Commission urged VZW to implement new mechanisms to assist minorities to acquire the Divestiture Assets, the Commission expected VZW to create mechanisms that would assist minorities in getting over the financial commitment barrier. While there are many such mechanisms that VZW could have implemented, such as meeting with potential minority bidders and financing institutions together to prove to the financing institutions that VZW was serious about trying to find minority buyers, VZW did nothing of the sort. Instead, VZW hid behind Morgan Stanley and allowed Morgan Stanley to use its standard, harsh, take it or leave it, bid management style to fend off would-be bidders.

Most importantly, VZW could have, and should have, advised minority bidders and their financing sources that it was prepared to take an 88% discount on the Remaining Divestiture Assets,

²⁰ MO&O at par. 49.

after it made its deal with AT&T. In the acquisition of the ALLTEL assets, VZW paid approximately \$2,145.00 per subscriber for the assets. In the VZW-AT&T transaction proposed in WT Docket No. 09-104, AT&T proposes to pay \$1,566.00 per subscriber. In the instant transaction, ATN proposes to pay VZW \$250.00 per subscriber. The price that ATN is paying is an 83% discount from the price that AT&T is paying for the Divestiture Assets that is receiving, and the price ATN is paying is an 88% discount from the price VZW paid for the Remaining Divestiture Assets that it is selling to ATN. Indeed, the giving of an 88% discount would certainly be the most effective mechanism that VZW could have created to provide minorities assistance in acquiring the Remaining Divestiture Assets. Had VZW conveyed this to the minority bidders and their financing sources, it is highly likely that one or more of the minority bidders could have met or exceeded that price with a firm financial commitment.

The critical point here is that regardless of what the Commission contemplated when it said it was seeking new mechanisms to assist minority bidders in acquiring the Divestiture Assets, the MO&O has established an interpretation of that language that appears inconsistent with the Commission's intent. Therefore, the Commission must grant this Application for Review to provide its interpretation of that language. This is a case of first impression, and the Commission cannot allow the Bureaus to interpret this important language without providing its guidance to the Bureaus and the industry.

VI. THE MO&O MADE AN ERRONEOUS FINDING AS TO AN IMPORTANT AND MATERIAL QUESTION OF FACT WHEN IT HELD THAT VERIZON WIRELESS'S CONDUCT AND INTERACTIONS WITH POTENTIAL BIDDERS AND ACTUAL BIDDERS WERE IN KEEPING WITH THE VERIZON-ALLTEL ORDER

In the MO&O, the Bureaus held that “Verizon Wireless's conduct and interactions with potential and actual bidders were in keeping with [the language of the *Verizon-ALLTEL Order*].”²¹ As demonstrated above, the Bureaus cannot be allowed to make the final determination on this issue, because it is a case of first impression which the Commission should rule upon. Moreover, the conclusion reached by the Bureaus in the MO&O is not supported by substantial evidence in the record, and is in fact contradicted by most of the evidence in the record.

In its Petition to Deny in this proceeding, NABOB demonstrated that VZW established a bidding process that was intended to give the erroneous impression that VZW had heeded the Commission's instruction to “consider and implement mechanisms to assist minorities . . . in acquiring the Divestiture Assets.” VZW hired Morgan Stanley & Co. Incorporated (“Morgan Stanley”) to handle the bidding process. However, the minorities who went through the process eventually realized that it was strictly “business as usual” in the VZW bidding process, and minority bidders were never given serious consideration as potential purchasers.

Although there was “word on the street” that VZW was going to ask the Minority Media and Telecommunications Council to conduct a special session with prospective minority bidders to acquaint them with what the process would entail and what steps VZW would undertake to assist minority bidders, no such session was ever held. Instead, VZW had Morgan Stanley conduct a bidding process that erected barriers to minority participation, and made no serious effort to bring

minorities into the bidding process.

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.

In addition, 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 Assets, and it “is in the strongest financial position of the interested companies.”²² 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.

²¹ MO&O at par. 50.

²² *Wall Street Journal*, February 4, 2009, at <http://online.wsj.com/article/>

Thus, when the announcement was made that, indeed, AT&T would acquire the bulk of the Divestiture Assets, the worst fears of the minority bidders were realized. It was at that point that the truth became crystal clear – the whole process had been a sham, and the minorities had expended a great deal of time, money and effort on a process that was rigged from the beginning.

The conclusion that the sale to AT&T was predetermined was made even more clear 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.²³ In other words, this was a situation in which the two industry behemoths traded licenses to carve up the country for themselves.²⁴

Shortly after the announced sale of the vast majority of the Divestiture Assets to AT&T, VZW announced the sale of the remaining Divestiture Assets to ATN. As explained above, the VZW-ATN transaction raises serious issues regarding the price at which the Remaining Divestiture Assets have been sold to ATN.

The purchase price at which ATN is receiving the Remaining Divestiture Assets is substantially below the current market price for such assets. The price that ATN is paying is an 83% discount from the price that AT&T is paying for the Divestiture Assets that is receiving, and the price ATN is paying is an 88% discount from the price VZW paid for the Remaining Divestiture Assets that it is selling to ATN. This is a huge discrepancy, and this discrepancy cannot be explained

SB123370887127645883.html.

²³ *Wall Street Journal*, May 9, 2009, at <http://online.wsj.com/article/SB124181197313301707>.

²⁴ The Commission must also look into whether the “swap agreement” between Verizon and AT&T from the proposed acquisition of Centennial Communications Corp. by AT&T constituted another barrier to other bidders for the Divestiture Assets. If it was, this is further evidence that bidding for the Divestiture Assets was a sham from the start, and its results cannot be approved

away merely because of the relatively smaller size of the transaction nor from the fact that these are rural markets. Many of the markets in the other transactions were also rural markets. Moreover, other bidders bid substantially more for some or all of the Remaining Divestiture Assets. The huge discount provided to ATN raises the clear implication that ATN received special consideration in the bidding process.

Indeed, it is difficult, if not inconceivable, to imagine what would cause a party in a competitive bidding process to conclude that it should offer a bid of between 83% and 88% below the prevailing market price. Such a bid reeks of inside information. However, the MO&O dismisses this issue by simply concluding “the ground rules established for the bidding process were reasonable.”²⁵ This huge discrepancy in the bid price raises questions which go far beyond the ground rules. Those questions go to what information did ATN have that the other bidders did not have, and who was the source of that information? Those questions must be answered, and they can only be answered in a hearing.

While the above questions cannot be answered without a hearing, there is evidence in the record which suggests what the motivation might be for someone to provide information to ATN that other bidders did not receive. Morgan Stanley, which acted as the broker of the transaction for VZW, held a substantial stake in ATN. Attached as Exhibit 1 is a copy of Morgan Stanley’s trades in ATN stock during the time that Morgan Stanley represented VZW with respect to the ALLTEL transaction. In his Declaration submitted with the VZW-AT&T “Joint Opposition of AT&T Inc. and Verizon Wireless to Petitions to Deny or to Condition Consent and Reply Comments” filed in WT

by the Commission.

²⁵ MO&O at par. 60.

Docket no. 09-104, Christopher J. Bartlett, Executive Director, Investment Banking Division, Morgan Stanley & Co., Incorporated, states that Morgan Stanley began representing VZW in connection with its acquisition of ALLTEL in March 2007. He also states that beginning August and September 2008, Morgan Stanley began working with VZW on the sale of the Divestiture Assets.

NABOB's Exhibit 1 attached shows that, in March 2007, when Morgan Stanley was first engaged by VZW, it owned no ATN stock. However, beginning in May 2007, Morgan Stanley began acquiring ATN shares. In May 2008, just before Morgan Stanley officially changed its role from representing VZW in the acquisition of ALLTEL to representing VZW in the sale of the Divestiture Assets, Morgan Stanley tripled its holdings in ATN. Morgan Stanley sold some of these shares, but still retained a significant ownership interest in ATN at the time that VZW announced the sale of the remaining Divestiture Assets to ATN. This clearly gives the appearance of a conflict of interest on the part of Morgan Stanley. Moreover, the appearance of a conflict of interest is increased by the substantially below market price described above. Given the questions raised by the greatly reduced price accepted by VZW from ATN, the conflict of interest must be investigated in a hearing.

VI. CONCLUSION

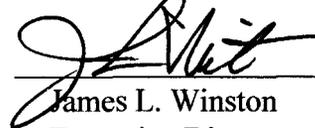
The MO&O: (1) conflicts with the Commission's statutory obligation under Sections 257, 309(i)(3), 309(j)(3)(B) and 310(d) to promote diversity of ownership of telecommunications facilities, promote ownership by minorities and to only grant an application if it serves the public interest, (2) involves a question of law and policy which the Commission has not previously resolved, and (3) erroneously found that VZW's conduct and interactions with potential bidders were in keeping with the *Verizon-ALLTEL Order*. NABOB submits that the Commission must: (1) grant

this Application for Review, (2) comply with its statutory obligation to promote diversity of ownership of telecommunications facilities and ownership by minorities, (3) rule on the question of VZW's obligation to create mechanisms to assist minorities to acquire the Divestiture Assets, as specified in the *Verizon-ALLTEL Order*, and (4) reverse the finding by the Bureaus that VZW complied with the *Verizon-ALLTEL Order*. Upon reversing the MO&O, the Commission should direct VZW to conduct a bidding process consistent with the Commission's direction in the ALLTEL Order or, in the alternative, the Commission should designate the Application for hearing.

Respectfully submitted,

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

By: _____



James L. Winston
Executive Director and
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National Association of Black Owned
Broadcasters, Inc.
1201 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
(202) 463-8970

May 12, 2010

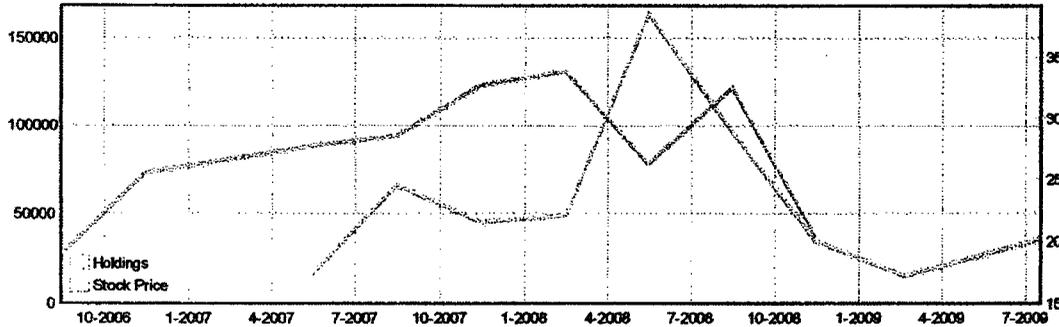
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MFFAIS

Mutual Fund Facts
About Individual Stocks

Enter Stock/Owner Name, Symbol, CUSIP, CR, ISIN, SEDOL, etc.

History of Morgan Stanley ownership of Atlantic Tele-Network Inc (ATNI)



Show: (if you do not see any data, try rechecking below)

- Holdings
- Stock Price

Show/Hide Columns

- Filed
- Symbol
- Activity
- Hypothetical New Value
- Director
- Officer Title
- As-Of/On
- Country
- Shares Change
- Hypothetical Value Change
- Ten Pct
- History
- Form
- Industry
- Shares Change Pct.
- Hypothetical Return
- Other
- FullName
- Shares
- Hypothetical Old Value
- Hypothetical Results
- Officer

Holdings/Transactions

Filed	As-Of/On	Form	FulName	Symbol	Country	Industry	Shares	Activity	Shares Change	Shares Pct. Change	Hypothetical Old Value	Hypothetical New Value	Hypothetical Value Chg.	Hypothetical Return	Hypothetical Results	Dtr
2009-07-17	2009-03-31	13F-HRB	Atlantic Tele-Network Inc	ATNI	US	Telephony-Integrated	36,772	Added More	20,695	128.72 %	\$1,425,650	\$1,470,512	\$44,862	3.14 %	\$25,248	
2009-02-19	2008-12-31	13F-HRB	Atlantic Tele-Network Inc	ATNI	US	Telephony-Integrated	16,077	Sold Some	-19,543	-64.90 %	-	\$842,919	-	- %	-	
2008-11-14	2008-09-30	13F-HRB	Atlantic Tele-Network Inc	ATNI	US	Telephony-Integrated	35,720	Sold Some	-61,727	-63.34 %	\$732,617	\$1,428,443	\$695,826	94.97 %	\$-1,202,442	
2008-08-15	2008-06-30	13F-HRB	Atlantic Tele-Network Inc	ATNI	US	Telephony-Integrated	97,447	Sold Some	-67,567	-40.96 %	\$3,176,798	\$3,696,986	\$721,108	22.70 %	\$-508,144	
2008-05-15	2008-03-31	13F-HRB	Atlantic Tele-Network Inc	ATNI	US	Telephony-Integrated	186,034	Added More	115,237	231.81 %	\$4,340,384	\$6,580,710	\$2,259,316	62.05 %	\$1,577,596	
2008-02-15	2007-12-31	13F-HRB	Atlantic Tele-Network Inc	ATNI	US	Telephony-Integrated	48,797	Added More	3,995	8.72 %	\$1,688,114	\$1,991,362	\$302,268	17.89 %	\$24,250	
2007-11-15	2007-09-30	13F-HRB	Atlantic Tele-Network Inc	ATNI	US	Telephony-Integrated	45,802	Sold Some	-21,915	-31.65 %	\$1,205,054	\$1,831,622	\$626,568	21.69 %	\$-148,837	
2007-08-15	2007-06-30	13F-HRB	Atlantic Tele-Network Inc	ATNI	US	Telephony-Integrated	66,817	Added More	48,511	288.33 %	\$1,912,971	\$2,672,012	\$759,041	39.67 %	\$563,551	
2007-05-15	2007-03-31	13F-HRB	Atlantic Tele-Network Inc	ATNI	US	Telephony-Integrated	17,206	New Holding	17,206	100 %	\$477,811	\$688,068	\$210,257	44.00 %	\$210,257	
2006-11-15	2006-09-30	13F-HRB	Atlantic Tele-Network Inc	ATNI	US	Telephony-Integrated	0	Sold All	-18,844	-100 %	-	-	-	96.05 %	\$-242,048	

2006-06-15	2006-06-30	13F-HB	Atlantic Life Network Inc	ATM	US	Telephone: Integrated	16,844	New Holding	16,844	100 %	\$319,868	\$673,592	\$353,724	110.56 %	\$363,724
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Returned 11 Transactions!

*Note: All amounts are based on price of stock at date reported versus the current price! They do not represent actual profit/loss!
There has been no adjustments for splits!*

Note: All amounts in USD, converted using IntraBank Exchange Rate on Date Reported/Today

Information is provided 'as is' and solely for informational purposes, not for trading purposes or advice, and may be inaccurate!
Note: For security reasons, only (A-Z,a-z,0-9,space,period,colon,comma,forward slash,at) can be inputted - all others are stripped automatically!

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CERTIFICATE OF SERVICE

I, Daniela Harris, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P., do hereby certify that on May __, 2010, true copies of the foregoing “Petition to Deny” were mailed, first class U.S. mail, postage pre-paid to the following:

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* Delivered via email

Daniela Harris

May __, 2010