

**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

**REPLY
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 Reply to the “Opposition of Cellco Partnership d/b/a Verizon Wireless to Applications for Review” (“VZW Opposition”) and the “Consolidated Opposition of Atlantic Tele-Network, Inc. to Applications for Review” (“ATN Opposition”) (collectively referred to as the “Applicants’ Oppositions”). The Applicants’ Oppositions were filed in response to NABOB’s 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 (the “MO&O”), granting the above-

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 Reply, all references will be to the redacted copy of the MO&O.

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”) (VZW and ATN are collectively referred to as the “Applicants”), from the assets of ALLTEL, Inc. (“ALLTEL”). The Applicants’ Oppositions were also filed in response to the Application for Review filed by Telephone USA Investments, Inc., May 20, 2010.

I. SUMMARY OF NABOB’S APPLICATION FOR REVIEW

In its Application for Review NABOB argued that:

- (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.

II. THE APPLICANTS FAIL TO DEMONSTRATE THAT REVIEW IS NOT REQUIRED

In their Oppositions, the Applicants assert that NABOB has failed to demonstrate that review is warranted in this proceeding. The Applicants assert that the MO&O did not conflict with any statutory duty of the Commission,² did not involve any unresolved issue of law or policy,³ and did not make an erroneous finding as to an important or material question of fact.⁴ NABOB's responses to most of the arguments presented in the Applicants' Oppositions are already set forth in NABOB's Application for Review, and, therefore, NABOB will not repeat those arguments here. However, NABOB will address some of the points raised in the Applicants' Oppositions below.

A. The Applicants Fail to Demonstrate that the MO&O Did Not Conflict with the Commission's Statutory Duty to Promote Diversity

The Applicants dismiss Sections 257, 309(i)(3), 309(j)(3)(B) and 310(d) of the Communications Act as having no bearing on the issues raised in this proceeding. The Applicants' cavalier disregard of the statutory provisions, however, is completely misplaced. Collectively, the statutory provisions identified by NABOB demonstrate an obligation imposed upon the Commission by Congress to promote diversity of ownership of telecommunications facilities. The Commission

² VZW Opposition at 5-8; ATN Opposition at 10-13.

³ VZW Opposition at 8-10; ATN Opposition at 6-9.

has recognized its obligation to promote diversity of ownership and has consistently implemented policies and rules to comply with that obligation.⁵ Moreover, the Commission recognizes that the obligation to promote minority ownership is a continuing obligation.⁶

As NABOB demonstrated in its Application for Review, the instant transaction will greatly diminish diversity of ownership in the wireless industry. It is therefore critical that the Commission take meaningful steps in this proceeding to comply with its statutory obligation to promote diversity of ownership of telecommunications facilities. Moreover, given the increased concentration of ownership in the wireless industry (reflected in the companion transaction, WT Docket No. 09-104), the instant transaction will be one of the few remaining opportunities for the Commission to meet its statutory obligation to promote diversity of ownership of wireless facilities.⁷ Collectively, the statutory provisions impose an obligation on the Commission to promote diversity of ownership of telecommunication facilities. The Applicants are incorrect that the lack of a specific statutory roadmap of how the Commission is to meet that obligation in this proceeding relieves the Commission of that obligation. The statutory provisions obligate the Commission to develop the roadmap for complying with those requirements in this proceeding.

⁴ VZW Opposition at 10-14; ATN Opposition at 9-10.

⁵ *Promoting Diversification of Ownership in the Broadcasting Services*, 23 FCC Rcd 5922 (2008) (“*Diversification Order*”).

⁶ *Diversification Order* at pars. 80-101.

⁷ In WT Docket No. 09-104, VZW proposes to sell the bulk of the Divestiture Assets to AT&T, thereby further increasing the concentration of control of the wireless industry by VZW and

B. The Applicants Fail to Demonstrate that the MO&O Did Not Involve Any Unresolved Issue of Law or Policy

In its Application for Review, NABOB demonstrated that the MO&O ruled on a major issue of law and policy which the Commission has not previously resolved. Specifically, the MO&O 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 interpreted this statement to be no more than a few words of encouragement.⁸ 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.

The Applicants support the Bureaus' interpretation of this language and claim that the language is incapable of being interpreted as anything more than a "suggestion" from the Commission.⁹ If the language was no more than a "suggestion," the Commission would have been engaged in a meaningless exercise. The Commission establishes law and policy. It is unimaginable that the Commission meant to place no meaning upon this language. The Commission obviously was looking to make a meaningful statement. It is up to the Commission, not the Bureaus, to explain the meaning of that language.

The meaning that the language appears to convey is that VZW was obligated to implement new mechanisms to assist minorities in acquiring the Divestiture Assets. When the Commission

AT&T.

⁸ MO&O at par. 49.

⁹ VZW Opposition at 9.

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 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 83% to 88% discount on the Remaining Divestiture Assets. The price that ATN is paying is an 83% discount from the price that AT&T is paying for the Divestiture Assets that it 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 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.

C. The Applicants Fail to Demonstrate that the MO&O Did Not Make an Erroneous Finding as to an Important or Material Question of Fact

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*]." ¹⁰ In its Application for Review, as restated above, NABOB demonstrated that 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. In its Application for Review, NABOB demonstrated that the bidding process was not transparent and minority bidders were given no mechanism to assist them in bidding. To the contrary, minority bidders were told that a single bid for all of the assets would be preferred, which supported the impression that AT&T was the preferred bidder for all of the Divestiture Assets. This impression proved to be well founded, as AT&T was chosen as the successful bidder for the bulk of the Divestiture Assets.

When the bidding for the Remaining Divestiture Assets was concluded, and ATN was chosen as the successful bidder, the price was announced to be a discount of between 83% and 88% below

¹⁰ MO&O at par. 50.

the market price. This created a clear question about whether all bidders were given the same treatment. The facts before the Bureaus when they issued the MO&O were: (1) no minority bidders were successful bidders for any of the Divestiture Assets, (2) the sales price for the Remaining Divestiture Assets was at a huge discount below the current market price, and (3) Morgan Stanley, the broker used by VZW to conduct the bidding, owned and traded in ATN stock during the bidding process.

These facts raise serious questions of fact regarding the conduct of the bidding process. Therefore, the conclusion reached by the Bureaus in the MO&O, that “Verizon Wireless’s conduct and interactions with potential and actual bidders were in keeping with [the language of the *Verizon-ALLTEL Order*]” is not supported by substantial evidence in the record, and is in fact contradicted by most of the evidence in the record.

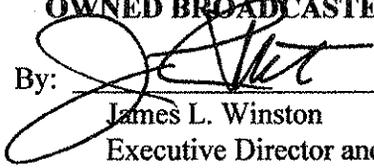
III. CONCLUSION

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 *Verizon-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
General Counsel
National Association of Black Owned
Broadcasters, Inc.
1201 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
(202) 463-8970

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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 June 14, 2010, true copies of the foregoing "Reply" were emailed to the following:

Nancy J. Victory
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
nvictory@wileyrein.com

John T. Scott, III
Michael Samsoc
Verizon Wireless
1300 Eye Street, NW
Suite 400 West
Washington, Dc 20006
john.scott@verizonwireless.com
michael.samsoc@verizonwireless.com

Jonathan V. Cohen
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037
joncohen@wbklaw.com

Douglas J. Minster
Mary M. de la Rosa Mabey
Atlantic Tele-Network, Inc.
10 Derby Square
Salem, MA 01970
dminster@atni.com
mmabey@atni.com

Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
julius.genachowski@fcc.gov

Michael J. Copps
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
michael.copps@fcc.gov

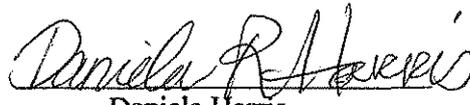
Robert M. McDowell
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
robert.mcdowell@fcc.gov

Mignon Clyburn
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
mignon.clyburn@fcc.gov

Meredith Attwell Baker
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
meredith.baker@fcc.gov

Ruth Milkman
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
ruth.milkman@fcc.gov

Erin McGrath
Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
erin.mcgrath@fcc.gov


Daniela Harris

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