

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

In the Matter of)
)
Atlantic Tele-Network, Inc. and)
Verizon Wireless)
) WT Docket No. 09-119
Applications for Consent to)
Assignment of Licenses and)
Transfer of Control)

REPLY OF TELEPHONE USA INVESTMENTS, INC.

Telephone USA Investments, Inc. (“Telephone USA”), by its attorneys and pursuant to Section 1.115 of the Commission’s rules, submits this reply to the oppositions of Verizon Wireless (“Verizon”) and Atlantic Tele-Networks (“ATN”) in the above-captioned proceeding.¹

It is pretty incredible what is happening here. First Verizon pretended to conduct a “bidding” process for its ALLTEL divestiture properties by feigning inclusion of disadvantaged bidders like Telephone USA. Now Verizon’s lawyers pretend that there are no legal issues worthy of Commission review and, indeed, that the Commission has no authority to disallow the sale of divestiture properties to ATN. The only question left is whether the FCC will follow Verizon’s lead and pretend that it didn’t mean what it said when it instructed Verizon to foster meaningful participation in the divestiture process and warned that Verizon’s compliance with that instruction would be part of the public interest analysis before approval of any divestiture transaction.

Telephone USA continues to have faith that the Commission was serious about using the *ALLTEL Merger Order* to promote participation by and inclusion of small businesses and other

¹ See Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless, *Memorandum Opinion and Order*, WT Docket No. 09-119, DA 10-661 (rel. Apr. 20, 2010) (“*ATN Approval Order*”); see also Application for Review of Telephone USA, filed May 20, 2010 (the “Application”)

traditionally disadvantaged groups in the bidding for the divestiture properties.² If Telephone USA is correct, the *ATN Approval Order* must be reversed.

The Oppositions spend several pages arguing that the Application presents no legal issues within the meaning of Section 1.115. That is pure nonsense. This case presents the straightforward legal question of whether the Bureaus correctly interpreted the divestiture requirements in the *ALLTEL Merger Order*. Telephone USA contends that Verizon failed to conduct a fair, open, and transparent divestiture process that really included traditionally disadvantaged bidders as required by the Commission. If Verizon and ATN were right, then the Bureaus would be the ultimate authority on the meaning and implementation of the Commission's *ALLTEL Merger Order*. However, it is elementary that the Bureaus interpret and enforce Commission orders only pursuant to delegated authority and that their exercise of that authority always is subject to Commission review and correction.³ The Application plainly presents substantial legal and factual issues that are ripe for the Commission's consideration.

The *ALLTEL Merger Order* directed Verizon to ensure that its bidding process was transparent and open to “new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups,” and, specifically referring to Verizon's conduct of the bidding process, warned that “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.”⁴ The Commission could hardly have been clearer that its public interest calculus would include an evaluation of whether Verizon fulfilled its responsibility to meaningfully

² Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444 (2008) (“*ALLTEL Merger Order*”).

³ See, e.g., Application for Review of Petition for Modification of LATA Boundary, *Order on Review*, 17 FCC Rcd 16952 (2002) (reversing Common Carrier Bureau decision that misapplied Commission directions).

⁴ *ALLTEL Merger Order*, 23 FCC Rcd at 17518 para. 50.

include small businesses and traditionally disadvantaged bidders. Nonetheless, the Bureaus apparently believed that the *ALLTEL Divestiture Order* did not give them authority to deny approval of the ATN transaction based on Verizon's failure to include nontraditional bidders in the divestiture process. This mistake, by itself, constitutes reversible error.

Further, the facts overwhelmingly show that Verizon failed to include small businesses and nontraditional bidders in the divestiture process. In the first place, Verizon sold most of the licenses to AT&T, the second-largest wireless company in the country, in a transaction that involved the swap and consolidation of the wireless holdings of both companies in several markets. Next, it sold the remainder of the properties to a company with large but poorly-run offshore wireless holdings, and without domestic retail telecommunications experience, at a bargain-basement price that left industry observers in disbelief.⁵ Where in that process was the accommodation and inclusion of small businesses and nontraditional bidders?

Verizon and ATN argue that the Application should be dismissed because Section 310 of the Act forecloses the Commission from examining whether ATN was the most qualified available buyers.⁶ That argument is a red herring. Telephone USA is not asking the Commission to find that Verizon should have selected Telephone USA or any other individual bidder. Telephone USA is asking the Commission to recognize the self-evident fact that Verizon did not conduct the fair and open bidding procedure that the *ALLTEL Merger Order* required. Obviously, the identity of the bidders Verizon selected and the terms of their purchase of the divestiture assets is probative of that question and examining those facts does not in any way conflict with Section 310.

When the Commission looks at the actual facts surrounding Verizon's divestiture process, the only reasonable conclusion that can be drawn is that Verizon's "inclusion" of small businesses

⁵ ATN asserts that its bid was the highest acceptable bid received by Verizon. ATN Opposition at 9-10. ATN's bid was only a small fraction of Telephone USA's last bid.

⁶ Verizon Opposition at 13; ATN Opposition at 6.

and nontraditional bidders was all for show. Verizon brags about all the things it did to include minority bidders in the process as if diversifying wireless ownership were a simple black-and-white bean-counting game.⁷ In fact, the *ALLTEL Merger Order* required Verizon to seek and actually include nontraditional bidders of all types, including small businesses like Telephone USA, not merely to check the box stating that it had asked for bids from small and diverse businesses.

Worse, Verizon continues to peddle the fiction that it “waived” requirements and bent over backwards to facilitate Telephone USA’s participation. As Telephone USA has shown repeatedly, there is no evidence of any waiver in the record, and to the extent the Bureaus relied on Verizon’s representations on this point, they were in clear error. A review of the documents shows that Verizon did not “waive” any requirement to help Telephone USA participate.⁸ Verizon offered to send the confidential offering memorandum to Telephone USA in advance of receiving a confidentiality agreement. Telephone USA sought no waiver of confidentiality and it returned to Verizon a signed confidentiality agreement. Verizon made no special provisions for Telephone USA due to its supposedly “late” entry into the bidding process. In point of fact, Telephone USA met every deadline Verizon set for bids and Telephone USA entered the process six months before the AT&T transaction was announced and nine months before the ATN transaction occurred. Moreover, while Verizon communicated with Telephone USA during the bidding process, that could not have been unusual, given that Verizon concluded agreements with AT&T and ATN outside the formal bidding process.

Ultimately, Verizon’s account of the bidding process simply doesn’t add up. Verizon claims – and the Bureaus apparently believed – that Verizon couldn’t select Telephone USA’s bid because telephone USA did not provide sufficient evidence of financing. But if that is why Telephone

⁷ Verizon Opposition at 7-8.

⁸ See Application at n.31.

CERTIFICATE OF SERVICE

I, Rayya Khalaf of Dow Lohnes PLLC do hereby certify that on this 14th day of June, 2010, copies of the foregoing Reply of Telephone USA Investments, Inc. were served upon the following:

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