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

In the Matter of	)	
	)	
Application of AT&T Inc. and	)	WT Docket No. 09-104
Cellco Partnership d/b/a Verizon Wireless	)	
	)	
For Consent to Assign or Transfer Control of	)	
Licenses and Authorizations and Modify a	)	
Spectrum Leasing Arrangement	)	

To: The Commission

OPPOSITION OF CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS TO PETITION FOR RECONSIDERATION

Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless"), by its attorneys, hereby submits its opposition to the Petition for Reconsideration[1] filed by the National Association of Black Owned Broadcasters, Inc. ("Petitioner") on July 22, 2010 regarding the Commission's Memorandum Opinion and Order approving the above-captioned transaction.[2] The Commission has held that "[r]econsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or existing until after the petitioner's last opportunity to present such matters."[3] A petition for reconsideration that

[1] Petition for Reconsideration of National Association of Black Owned Broadcasters, Inc., WT Dkt No. 09-104 (filed July 20, 2009) (the "Petition").

[2] *Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless and for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, Memorandum Opinion and Order, FCC 10-116, WT Docket No. 09-104 (June 22, 2010) ("*MO&O*").

[3] *General Motors Corporation and Hughes Electronics Corporation, Transferors and The News Corporation Limited, Transferee, for Authority to Transfer Control*, Order on Reconsideration, 23 FCC Rcd 3131, ¶ 4 (2008) ("*General Motors Order*").

fails to rely on new facts or changed circumstances may be dismissed by the Commission as repetitious. Further, "[a] petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied."[4] In past proceedings, the Commission has thus denied petitions for reconsideration where a party "simply recites the issues raised in its Petition to Deny" and "fails to offer any additional argument or evidence in support thereof."[5]

The Commission should deny the Petition because it fails to raise any material error of fact or law or present new or previously unknown facts and circumstances; rather, the Petition merely recycles many of the same incorrect arguments that the Commission already considered and rejected.

I. INTRODUCTION AND SUMMARY.

In the *MO&O*, the Commission granted the applications of Verizon Wireless and AT&T Inc. ("AT&T") to assign or transfer certain licenses and authorizations (the "Divestiture Assets") from Verizon Wireless subsidiaries to AT&T. Petitioner filed a Petition to Deny the applications in which Petitioner erroneously argued, as it does here, that the *Verizon Wireless-ALLTEL Order* directed Verizon Wireless to divest the Divestiture Assets in accordance with a specific procedural mechanism and that Verizon Wireless failed to adhere to that directive by conducting a "sham" auction designed to preclude participation by minorities.[6] Petitioner's core argument is

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[4] *One Mart Corporation*, Memorandum Opinion and Order, 23 FCC Rcd 9910, ¶ 5 (2008). *See also GTE Corporation, Transferor, And Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorization and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Order on Reconsideration, 18 FCC Rcd 24871, ¶ 5 (2003).

[5] *General Motors Order*, ¶ 11. *See also AVR, L.P.*, Memorandum Opinion and Order, 16 FCC Rcd 1247, ¶ 3 (2001) ("TDS's petition essentially repeats the same arguments it relied upon in the comments and reply comments it filed . . . [t]he Commission rejected these arguments in the *Hyperion Preemption Order*.").

[6] Petition to Deny of National Association of Black Owned Broadcasters, Inc., WT Dkt No. 09-104 at 6-8 (filed July 20, 2009) ("*NABOB Petition to Deny*"); *see also* Petition at 10.

that the Commission did not mean what it said when it plainly stated in the *Verizon Wireless-ALLTEL Order* that it "decline[d] to impose specific conditions regarding potential acquirers of and methods for selling the Divestiture Assets" and instead chose only to "*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*."[7]

In interpreting this language in response to the claims of Petitioner and certain other parties opposing this transaction, the Commission held in the *MO&O* that "this language includes *no directive* regarding the specific ways in which Verizon Wireless should assist regional, local and rural wireless providers, new entrants, small businesses and businesses owned by minorities or socially disadvantaged groups in seeking to acquire Divestiture Markets."[8] However, despite the fact that the Commission expressly declined to impose specific divestiture methods upon Verizon Wireless in the *Verizon Wireless-ALLTEL Order*, and appropriately interpreted its own unambiguous language from that order in the *MO&O*, the Petitioner continues to argue that the Commission's expressly permissive language was instead a mandate. Further, Petitioner again ignores the Commission's clear finding that the record demonstrates that, notwithstanding the absence of any requirement to conduct a particular divestiture process, Verizon Wireless did in fact make efforts to encourage and facilitate small, minority, and socially disadvantaged business participation.

Petitioner seeks reconsideration of the *MO&O* based on two purported flaws in the

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[7] *Verizon Wireless-ALLTEL Order* at ¶ 162 (emphasis added).

[8] *MO&O* at ¶ 121 (emphasis added).

Commission's decision in the *MO&O*: (1) that the *MO&O* 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 to promote diversity of ownership of telecommunications facilities and to grant an application only if it serves the public interest; and (2) that the Commission's decision is not supported by the record evidence. As will be demonstrated below, the Petition should be denied because it fails to raise any arguments or facts that warrant reconsideration.

II. THE *MO&O* DID NOT CONFLICT WITH ANY STATUTORY DUTY OF THE COMMISSION TO PROMOTE DIVERSITY OF OWNERSHIP AND SERVE THE PUBLIC INTEREST.

As noted above, the Petition argues that the decision in the *MO&O* conflicts 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. While the Petition asserts that the *MO&O* interpreted the *Verizon Wireless-ALLTEL Order* in a "narrow" manner that gave these four enumerated statutory provisions "inadequate weight," it does not even attempt to offer any specific arguments in support of any of these legal claims, relying instead on broad statements regarding the Commission's duty to promote diversity in ownership.[9] However, even a cursory review of those provisions makes clear that none of them is in conflict with the *MO&O* and, in any event, most are inapplicable to the instant proceeding.

Section 257 requires the Commission to conduct a proceeding to identify and eliminate "by regulations" market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications and information services and to periodically

[9] Petition at 6-8.

report to Congress thereafter.[10] Yet, Petitioner does not claim that the Commission failed to implement any regulation, nor does it offer any argument whatsoever as to how the *MO&O* conflicts with that requirement. Indeed, Petitioner does not bother to explain how Section 257 is at all relevant, let alone that it compels an interpretation of the *Verizon Wireless-ALLTEL Order* different from that made by the Commission in the *MO&O*. Because this proceeding has nothing to do with the adoption of or failure to adopt regulations, Section 257 is inapposite.

Petitioner's claims pursuant to Sections 309(i)(3) and 309(j)(3)(B) are equally inapplicable. Sections 309(i)(3) and 309(j)(3)(B) both concern the grant by the Commission of any "initial license or construction permit which involve" use of electromagnetic spectrum.[11] The instant transaction involves the secondary market sale of licensed spectrum, not the grant by the Commission of an "initial" license for fallow spectrum or a construction permit, and thus does not fall within the scope of these provisions.

Petitioner also argues broadly that the *MO&O* does not serve the public interest consistent with Section 310(d).[12] Notwithstanding the fact that the exhaustive record in this proceeding supports the conclusion by the Commission that the transaction serves the public interest, Petitioner ignores the fact that not only is Section 310(d) not in conflict with the decision in the *MO&O*, but that Section 310(d) expressly *precludes* the Commission from considering the qualifications of any party other than the proposed transferee, in this case, AT&T.[13] Thus, Petitioner's request that the Commission overturn the *MO&O* in order to

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[10] 47 U.S.C. § 257.

[11] *See* 47 U.S.C. §§ 309(i)(3) and 309(j)(3(B).

[12] *Id.* at 7.

[13] 47 U.S.C. § 310(d) ("[I]n acting [on an assignment or transfer of control application,] the Commission may not consider whether the public interest, convenience and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.").

consider the merits of other bidders is prohibited by one of the very statutes that Petitioner cites. The Petition should be dismissed for that reason alone.

Finally, Petitioner seems to suggest that the provisions cited above, coupled with the language in the *Verizon Wireless-ALLTEL Order*, collectively imposed upon the Commission a duty to consider whether the successful bidder was a minority or small business in determining whether the transaction serves the public interest.[14] However, as demonstrated above, the provisions cited by Petitioner are not germane to this proceeding, and the Commission never indicated in the *Verizon Wireless-ALLTEL Order* that it would consider whether the chosen buyer was a minority-, women-owned or small buyer in its review of this transaction. To the contrary, the Commission indicated 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."[15] This statement simply reiterates the Commission's obligations in reviewing a proposed transaction. It does not expand the Commission's review to include alternative buyers (nor could it do so given Section 310(d)'s express language). Therefore, the only relevant inquiry is whether AT&T is qualified to hold the relevant licenses and whether the proposed transaction will serve the public interest, not whether Verizon Wireless should have chosen a different buyer. In this case, the Commission correctly found that the proposed transaction meets this standard and the Petition provides no valid arguments to refute that finding.

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[14] *See* Petition at 8.

[15] *Verizon Wireless-ALLTEL Order* at ¶ 162.

III. THE COMMISSION'S DECISION IN THE *MO&O* IS SUPPORTED BY EXTENSIVE EVIDENCE IN THE RECORD REPUDIATING PETITIONER'S POSITION.

Petitioner also challenges the Commission's approval of the transaction by claiming that the bid process Verizon Wireless utilized to effectuate the sale of the Divestiture Assets was a "sham" that violated the Commission's supposed requirements.[16] This claim is undermined by extensive factual documentation in the record that the Commission reviewed and discussed in reaching its decision to approve the transaction.

In the *MO&O*, the Commission found that, not only did Verizon Wireless fully comply with the requirements of the *Verizon Wireless-ALLTEL Order*, but Verizon Wireless voluntarily made special concessions to minority bidders specifically for the purpose of implementing the Commission's suggestion. For instance, after reviewing the claims of various opponents of the transaction, including Petitioner, the Commission concluded that:

> The record before us indicates that Verizon Wireless did implement mechanisms to assist [small, minority and socially disadvantaged businesses] during the bidding process. Verizon Wireless took several steps to reach out to small business and businesses owned by minorities or socially disadvantaged groups. Indeed, in some instances, Verizon Wireless and Morgan Stanley waived certain procedures at the request of Telephone USA, which was interested in becoming a new entrant in the wireless services market.[17]

The Commission's thorough review and consideration of the facts surrounding this transaction belie the Petitioner's claims that the Commission's conclusion was reached erroneously. Further, Petitioner fails to identify any erroneous finding of fact that the Commission relied on. Instead, Petitioner repeats the same claims that it made in its Petition to Deny – claims that the

[16] Petition at 6-8.

[17] *MO&O* at ¶ 121.

Commission fully discussed and then rejected based on the evidence.[18]

For instance, the Petition relies heavily on the contrived premise that the divestiture process was designed to specifically exclude small, minority, and socially disadvantaged businesses from participation.[19] However, this claim is directly contradicted by the voluminous record documenting Verizon Wireless' efforts to encourage and facilitate minority and small business participation.[20] As Verizon Wireless has previously demonstrated, Verizon Wireless provided a preliminary overview to a large number of prospective buyers, including a number of minority-owned firms, four of which actively participated in the process. When one minority firm dropped out, Verizon Wireless went back to that firm to encourage it to rejoin and provided guidance as to the geographic areas where it could be competitive in the sale process. Additionally, certain bid timelines and other procedural requirements that applied to all bidders were relaxed for minority-owned firms.[21]

The reality is that minority and socially disadvantaged businesses were afforded ample opportunities and concessions to encourage their participation. The fact that a minority or socially disadvantaged business was not ultimately selected does not negate the open and inclusive process that was used to conduct the divestiture sale. In the end, Verizon Wireless chose an entity with the most experience, financial wherewithal, and ability to consummate the

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[18] *See, e.g., MO&O* at ¶ 131 (rejecting Petitioner's claims regarding the bidding process).

[19] For example, Petitioner's claim that the dates for the submission of bids changed without warning and that minority bidders were not given information explaining these changes is wholly inaccurate. Petition at 10. To the contrary, on January 29, 2009 Morgan Stanley sent a letter to all prospective bidders in this stage of the process, including minority-owned entities indicating that the final bid date was being pushed back to March 30, 2009.

[20] *See, e.g.,* Joint Opposition of AT&T Inc. and Verizon Wireless to Petitions to Deny or to Condition Consent and Reply to Comments, at 22-27 (July 31, 2009) (discussing additional efforts to engage minority-owned firms and small businesses, including holding personal meetings not afforded to other bidders and making confidential information available earlier than bid procedures provided).

[21] *Id.*

transaction in a timely manner, and did so in a manner fully consistent with the *Verizon Wireless-ALLTEL Order*.

IV. SECTION 310(d) PROHIBITS THE COMMISSION FROM CONSIDERING OTHER BUYERS AS SUGGESTED BY THE PETITIONER.

Petitioner demands that the *MO&O* be reversed and that Verizon Wireless be required to conduct a new process, presumably resulting in the selection of a bidder more to the Petitioner's liking. However, as noted above, the Commission has repeatedly determined that Section 310(d) precludes the Commission from considering whether sale to a different buyer would be preferable when determining whether an application for transfer of licenses serves the public interest.[22] Accordingly, Petitioner's request for relief is barred by Section 310(d) and should be rejected.

V. CONCLUSION.

For the foregoing reasons, the Commission should deny the Petition. The Commission approved the transaction in the *MO&O* in a manner that was consistent with all applicable laws

[22] *See, e.g.*, *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, ¶¶ 149-150 (1994), *aff'd sub nom. SBC Commc'ns Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995) (rejecting NABOB's argument that the FCC cannot approve an assignment application without "a demonstration from the applicants that efforts were made to sell the McCaw-controlled television stations to minority-owned companies"); *Applications for Consent to the Assignment &/or Transfer of Control of Licenses Adelphia Commc'ns Corp. (& Subsidiaries, Debtors-In-Possession) to Time Warner Cable Inc. (Subsidiaries)*, Memorandum Opinion and Order, 21 FCC Rcd 8203, ¶ 285 (2006) (noting that "the Commission must examine whether the transactions before it will serve the public interest without regard to other possible transactions"); *MCI Commc'ns Corp. & S. Pac. Telecomms. Co. for Consent to Transfer Control of Qwest Commc'ns, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 7790, ¶ 29 (1997) (citing Section 310(d) and noting that "in the instant transfer proceeding, the Commission was precluded by statute from considering competing, third-party applications").

and regulations, including the *Verizon Wireless-ALLTEL Order*, and the Petition fails to provide a basis for reconsideration.

Respectfully submitted,

VERIZON WIRELESS

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August 2, 2010

CERTIFICATE OF SERVICE

I, Patricia Destajo, do hereby certify that on August 2, 2010, a true copy of the foregoing "Opposition of Cellco Partnership d/b/a Verizon Wireless to Petition for Reconsideration" was served upon the following by first class U.S. mail, postage pre-paid:

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