

Before the
Federal Communications Commission
Washington, D.C. 20554

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

ORDER ON RECONSIDERATION

Adopted: February 2, 2015

Released: February 2, 2015

By the Chief, Wireless Telecommunications Bureau:

1. In this Order on Reconsideration, we address a petition for reconsideration filed in 2010 by the National Association of Black Owned Broadcasters, Inc. ("NABOB") seeking reconsideration of the Commission's conclusion that Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") properly divested certain licenses and associated business units in the Commission's AT&T-Verizon Wireless Order. We find that NABOB identifies no material error or omission in the Commission's AT&T-Verizon Wireless Order, presents no additional new facts warranting reconsideration, and relies upon the same arguments that have already been considered and addressed by the Commission. We accordingly deny NABOB's Petition.

2. Background. On June 13, 2008, Verizon Wireless and Atlantis Holdings filed an application seeking consent to the transfer of control of licenses and authorizations held by subsidiaries of ALLTEL from Atlantis Holdings to Verizon Wireless. On November, 4, 2008, the Commission approved the transaction conditioned upon Verizon Wireless's divestiture of operating units in five markets and upon the completion of divestitures in 100 markets that Verizon Wireless voluntarily committed to divest. Rejecting requests by some petitioners, the Commission declined to impose specific conditions regarding how to divest the assets of the 105 Divestiture Markets but directed that the entire operating unit of either Verizon Wireless or ALLTEL must be divested in those markets. The

1 Petition for Reconsideration of The National Association of Black Owned Broadcasters, Inc., WT Docket No. 09-104 (filed July 22, 2010) ("Petition").

2 Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, Memorandum Opinion and Order, 25 FCC Rcd 8704 (2010) ("AT&T-Verizon Wireless Order").

3 See Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and 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, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008) ("Verizon Wireless-ALLTEL Order").

4 Verizon Wireless-ALLTEL Order, 23 FCC Rcd at 17516-17 ¶ 159.

5 Verizon Wireless-ALLTEL Order, 23 FCC Rcd at 17518 ¶ 162.

Commission pointed out that, “to provide greater assurance that the buyer will be an effective competitor, the DOJ is requiring that certain groups of [Cellular Market Areas (“CMAs”)] be divested to a single purchaser.”<sup>6</sup> The Commission concluded that, “[a]lthough we decline [requests by certain parties] to impose specific conditions regarding the potential acquirers of and methods for selling the [assets in the Divestiture Markets (“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.”<sup>7</sup>

3. Subsequently, Verizon Wireless conducted a bidding process to identify potential buyers of the Divestiture Assets that the Commission and the DOJ required be divested.<sup>8</sup> That process resulted in Verizon Wireless proposing to sell to AT&T licenses and business units in 79 of the 105 Divestiture Markets.<sup>9</sup> NABOB and others petitioned against the proposed divestiture to AT&T, contending that the bidding process did not comply with the Commission’s divestiture mandates set forth in the *Verizon Wireless-ALLTEL Order*.<sup>10</sup> In its Petition to Deny, NABOB argued in particular that the bidding process erected barriers to minority participation and that minority bidders were not given serious consideration as potential purchasers, due at least in part to Verizon Wireless’s alleged preference for a single purchaser, which NABOB asserted effectively precluded small entities.<sup>11</sup> NABOB claimed that the bidding process was not fair and open but merely was for “show,” and that winners were predetermined.<sup>12</sup> NABOB argued that the divestiture to AT&T would do damage to the Commission’s statutory duty to promote diversity of ownership in the telecommunications industry.<sup>13</sup>

4. In the *AT&T-Verizon Wireless Order*, the Commission disagreed with NABOB’s Petition to Deny and granted consent to the divestiture, concluding that Verizon Wireless had conducted its bidding process in accordance with the guidance set forth in the *Verizon Wireless-ALLTEL Order*.<sup>14</sup> The record showed that Verizon Wireless had implemented mechanisms to assist and had taken several steps to reach out to small businesses and businesses owned by minorities or socially disadvantaged groups.<sup>15</sup> The Commission, noting its express rejection in the *Verizon Wireless-ALLTEL Order* of specific conditions to govern the divestiture process, explained that the bidding process complied with the order’s language and did not otherwise undercut the competitive objectives of the required divestiture.<sup>16</sup>

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<sup>6</sup> *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17518 ¶ 162.

<sup>7</sup> *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17518 ¶ 162.

<sup>8</sup> *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8752 ¶ 116.

<sup>9</sup> Verizon Wireless reached an agreement with Atlantic Tele-Network (“ATN”) regarding the sale of assets in the other 26 Divestiture Markets. *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8752 ¶ 116.

<sup>10</sup> Petition to Deny of The National Association of Black Owned Broadcasters, Inc., WT Docket No. 09-104 (filed July 20, 2009) (“Petition to Deny”); *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8753-54 ¶ 119.

<sup>11</sup> *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8752, 8754 ¶¶ 116, 119; Petition to Deny at 6-8.

<sup>12</sup> *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8753-54 ¶ 119; Petition to Deny at 6-8.

<sup>13</sup> Petition to Deny at 5-6; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8728 n.177.

<sup>14</sup> *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8754 ¶ 121.

<sup>15</sup> *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8755 ¶ 121.

<sup>16</sup> *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8760 ¶ 133. The Commission thus found it unnecessary to address the applicants’ claim that NABOB, which is a trade association representing the interests of African American owned broadcast stations (Petition to Deny at 2), had failed to demonstrate standing. *Id.*, 25 FCC Rcd at 8752 n.396.

5. *Petition for Reconsideration.* NABOB now seeks reconsideration of the *AT&T-Verizon Wireless Order*. In its Petition for Reconsideration, NABOB argues that the Commission failed to give adequate weight to the evidence it had submitted in its Petition to Deny.<sup>17</sup> NABOB contends specifically that the *AT&T-Verizon Wireless Order* gave little or no weight to its assertions that Verizon Wireless had erected barriers to minority participation and that minorities were not given serious consideration.<sup>18</sup> NABOB repeats its contention from its Petition to Deny that the bidding was designed to favor a large existing carrier and that the bidding process for minority bidders was erratic and inconsistent, leading NABOB to conclude that the bidding process was a “sham” and that the divestiture to AT&T was “predetermined.”<sup>19</sup> NABOB further argues that Commission approval of the divestiture “conflicts with [its] statutory obligation under sections 257, 309(i)(3), 309(j)(3)(B) and 310(d)” of the Communications Act of 1934, as amended (the “Communications Act”), “. . . to promote diversity of ownership of telecommunications facilities, promote ownership by minorities, and to grant an application only if it serves the public interest.”<sup>20</sup> NABOB maintains that the Commission’s conclusion that Verizon Wireless’s bidding process was in keeping with the guidance set forth in the *Verizon Wireless-ALLTEL Order* gives too little weight to such obligations.<sup>21</sup>

6. Verizon Wireless opposes NABOB’s Petition for Reconsideration. As to the bidding process, it asserts that the Commission reviewed an “extensive factual documentation in the record” to conclude that the process complied with the requirements of the *Verizon Wireless-ALLTEL Order*.<sup>22</sup> Verizon Wireless claims that NABOB identifies no erroneous finding of fact but instead repeats the same claims made in its Petition to Deny, which the Commission discussed and addressed in the *AT&T-Verizon Wireless Order*.<sup>23</sup> As to NABOB’s statutory assertions, Verizon Wireless argues that “this proceeding has nothing to do with the adoption of or failure to adopt regulations” under section 257, that the lottery and auction provisions of the Communications Act cited by NABOB relate only to applications for initial licenses and not to secondary market transactions, and that for such transactions section 310(d) actually precludes consideration of the qualifications of other potential purchasers.<sup>24</sup> AT&T also opposes the Petition, similarly arguing that NABOB fails to demonstrate any material error or present any new evidence that would warrant reconsideration.<sup>25</sup> NABOB did not reply to Verizon’s or AT&T’s oppositions.

7. *Discussion.* Pursuant to section 1.106 of the Commission’s rules, parties may petition for reconsideration of final Commission action.<sup>26</sup> Reconsideration generally is appropriate only where the petitioner shows either a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner’s last opportunity to respond.<sup>27</sup> A petition for

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<sup>17</sup> Petition at 4.

<sup>18</sup> Petition at 9.

<sup>19</sup> Petition at 10.

<sup>20</sup> Petition at 3, 7, *referencing* 47 U.S.C. §§ 257, 309(i)(3), 309(j)(3)(B), and 310(d).

<sup>21</sup> Petition at 8.

<sup>22</sup> Opposition of Cellco Partnership d/b/a/ Verizon Wireless to Petition for Reconsideration, WT Docket No. 09-104 (filed August 2, 2010) (“Verizon Wireless Opposition”).

<sup>23</sup> Verizon Wireless Opposition at 8-9.

<sup>24</sup> Verizon Wireless Opposition at 5.

<sup>25</sup> Opposition of AT&T Inc. to Petition for Reconsideration, WT Docket No. 09-104 (filed August 2, 2010) at 2-3.

<sup>26</sup> 47 C.F.R. § 1.106.

<sup>27</sup> Petition for Reconsideration by Acadiana Cellular General Partnership, *Order on Reconsideration*, 20 FCC Rcd 8660, 8663 ¶ 8 (2006).

reconsideration that relies on arguments that have been fully considered and addressed by the Commission within the same proceeding, that fails to identify any material error or omission warranting reconsideration, or that relies on arguments not previously presented to the Commission that do not meet specific requirements, may be dismissed or denied by the Bureau.<sup>28</sup>

8. In this case, the arguments set forth in NABOB's Petition for Reconsideration with respect to the divestiture process were fully considered and addressed by the Commission in the *AT&T-Verizon Wireless Order*. In the *AT&T-Verizon Wireless Order*, the Commission addressed NABOB's Petition to Deny and found that Verizon Wireless had conducted its bidding process in accordance with the guidance set forth in the *Verizon Wireless-ALLTEL Order*.<sup>29</sup> The Commission also found that Verizon Wireless took a number of steps throughout the course of the bidding process to promote participation by minority-owned businesses and socially disadvantaged groups.<sup>30</sup> NABOB's repetition of arguments that were considered and addressed previously does not warrant reconsideration that the grant of consent to the subject assignment and transfer of control applications served the public interest. Additionally, NABOB presents no additional facts and raises no material error or omission in the original order that warrants reconsideration. To the extent it raises new statutory arguments,<sup>31</sup> it has specified none of the grounds required by the Commission's rules for doing so, and fails to identify any reason why these statutory provisions would bar Verizon Wireless' conduct of the bidding process in accordance with the Commission's prior guidance. For these reasons, we deny the Petition for Reconsideration.

9. *Ordering Clauses.* Accordingly, having reviewed the record in this matter, IT IS ORDERED that, pursuant to sections 4(i), 5(c), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and 405(a), and section 1.106(p) of the Commission's rules, 47 C.F.R. § 1.106(p), the Petition for Reconsideration filed by the National Association of Black Owned Broadcasters, Inc. is hereby DENIED for the reasons stated herein.

10. This action is taken under delegated authority pursuant to sections 0.131, 0.331, and 1.106(p) of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.106(p).

FEDERAL COMMUNICATIONS COMMISSION

Roger C. Sherman  
Chief, Wireless Telecommunications Bureau

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<sup>28</sup> Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization, *Report and Order*, 26 FCC Rcd 1594, 1606 ¶¶ 27-28 (2011) (*Revision of Recon Rules Order*); see also 47 C.F.R. §§ 1.429(l) (codifying delegation in rulemaking cases) and 1.106(p) (codifying same delegation in non-rulemaking cases).

<sup>29</sup> *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8754 ¶ 121. We also note that the factual allegations in the Petition to Deny, which featured reliance upon "word on the street" and a newspaper article, were not supported by affidavit of any person "with personal knowledge thereof." See 47 U.S.C. § 309(d)(1); Petition to Deny at 7, Declaration of James L. Winston.

<sup>30</sup> *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8754 ¶ 121.

<sup>31</sup> In its Petition to Deny, NABOB referred to statutory "efforts to expand minority ownership opportunities," but did not assert that the divestiture process violated any statutory obligations. Petition to Deny at 2 & n.3.