

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

In the Matter of )
Applications of Cellco Partnership d/b/a Verizon )
Wireless and Rural Cellular Corporation for )
Consent to Transfer Control of Licenses, )
Authorizations, and Spectrum Manager Leases, )
and Petitions for Declaratory Ruling that the )
Transaction is Consistent with Section 310(b)(4) )
of the Communications Act )
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. 07-208
ISP-PDR-20070928-00011
ISP-PDR-20070928-00012
WT Docket No. 08-95
ISP-PDR-20080613-00012

ORDER ON RECONSIDERATION

Adopted: August 4, 2011 Released: August 4, 2011

By the Commission:

I. INTRODUCTION

1. This Order on Reconsideration (Order) concerns Commission policies implementing section 310(b) of the Communications Act of 1934 (Act), which governs foreign ownership in holders of certain types of licenses. In this Order, we consider two petitions for reconsideration filed by Chatham Avalon Park Community Council (Chatham) of the declaratory rulings in two adjudicatory proceedings in which we granted the applications of Cellco Partnership d/b/a/ Verizon Wireless (Verizon Wireless), as transferee, for authority to acquire control of the licenses and authorizations of subsidiaries of Rural Cellular Corporation (RCC) and Alltel Corporation (Alltel) in two separate transactions.<sup>1</sup> Those

<sup>1</sup> See Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases and Petitions for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463, 12526, ¶ 151 (2008) (Verizon Wireless-RCC Order); 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, 17546, ¶ 232 (2008) (Verizon Wireless-Alltel Order). The International Bureau assigned IBFS File Nos. ISP-PDR-20070928-00011 and -00012 to the petitions for declaratory ruling in the Verizon Wireless-RCC proceeding, and IBFS File No. ISP-PDR-20080613-00012 to the petition for declaratory ruling in the Verizon Wireless-Alltel proceeding.

declaratory rulings extended Verizon Wireless' foreign ownership ruling under section 310(b)(4) of the Communications Act (Act) to encompass the acquisition of control of the relevant entities and licenses.

2. In both petitions, Chatham asserts that we erred in accepting the foreign ownership showing provided by Verizon Wireless. As discussed below, we dismiss Chatham's petition for reconsideration in the Verizon Wireless-RCC proceeding on procedural grounds.<sup>2</sup> We consider the foreign ownership argument in Chatham's petition for reconsideration in the Verizon Wireless-Alltel proceeding and deny the petition in that regard for the reasons discussed below. In responding to Chatham's petition for reconsideration of the foreign ownership ruling in the Verizon Wireless-Alltel proceeding, we do not consider, in this Order, a second issue in Chatham's petition related to a proposed divestiture condition, nor do we consider the petitions for reconsideration filed by other parties in the Verizon Wireless-Alltel proceeding, which do not raise any objection to our foreign ownership ruling.<sup>3</sup> Chatham's divestiture argument and the other petitions for reconsideration in this proceeding will be addressed separately.

## II. BACKGROUND

3. On August 1, 2008, we released a decision in the *Verizon Wireless-RCC Order*, WT Docket No. 07-208, granting a series of applications filed by Verizon Wireless and RCC seeking Commission approval of the transfer of control of licenses, authorizations, and spectrum manager leasing arrangements held by RCC and its subsidiaries from RCC to Verizon Wireless.<sup>4</sup> At the same time, we also granted two petitions for declaratory ruling filed by Verizon Wireless, a general partnership, through various foreign- and U.S.-organized subsidiaries, of Vodafone Group PLC (Vodafone), a U.K.-organized entity, and Verizon Communications, Inc. (Verizon), a U.S.-organized entity with some foreign ownership.<sup>5</sup> The petitions for declaratory ruling (IBFS File Nos. ISP-PDR-20070928-00011, -00012) sought to extend Verizon Wireless' existing foreign ownership ruling under section 310(b)(4) of the Act to the RCC licenses and authorizations over which Verizon Wireless sought to acquire control.<sup>6</sup> In support of its petitions for declaratory ruling, Verizon Wireless submitted ownership information to

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<sup>2</sup> Chatham, which did not participate in the proceeding leading up to our decision in the Verizon Wireless-RCC proceeding, filed the only petition for reconsideration of our decision, objecting to the "special treatment" it says Verizon Wireless received in showing its compliance with its section 310(b)(4) foreign ownership ruling. Petition for Reconsideration of Chatham Avalon Park Community Council in WT Docket No. 07-208 (filed Aug. 15, 2008) at 1-5 (Petition for Reconsideration in WT Docket No. 07-208).

<sup>3</sup> Chatham participated, along with other parties, in the proceeding leading up to our decision in the Verizon Wireless-Alltel proceeding. Chatham and other parties seek reconsideration of our decision on various grounds. In its petition for reconsideration, Chatham again objects to what it terms as "special treatment" granted to Verizon Wireless in showing compliance with its section 310(b)(4) foreign ownership ruling. Petition for Reconsideration of Chatham Avalon Park Community Council in WT Docket No. 08-95 (filed Dec. 10, 2008) at 1-2 (Petition for Reconsideration in WT Docket No. 08-95). Chatham also objects to our decision not to require a divestiture condition. Other parties raise issues unrelated to our foreign ownership ruling.

<sup>4</sup> *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12465, ¶ 3.

<sup>5</sup> *Id.*

<sup>6</sup> Although Verizon Wireless already held a foreign ownership ruling under section 310(b)(4), the ruling did not encompass the licenses and authorizations over which Verizon Wireless would acquire control in the RCC proceeding. The Commission currently issues foreign ownership rulings to cover only the applicants, licensees, or lessees named in an underlying petition for declaratory ruling. An affiliate entity generally is not permitted to rely on a ruling issued to a parent, subsidiary or sister company and must submit its own petition for declaratory ruling requesting prior Commission approval of its indirect foreign ownership pursuant to section 310(b)(4).

demonstrate its compliance with its existing ruling.<sup>7</sup>

4. On August 15, 2008, Chatham, which did not participate in the proceeding leading up to the *Verizon Wireless-RCC Order*, filed a petition seeking reconsideration of the Commission's foreign ownership ruling in that decision.<sup>8</sup> Chatham states that it is a community-based organization located in and around Chicago, Illinois, with hundreds of members who are consumers of telecommunications services, some of which are offered by Verizon Wireless.<sup>9</sup> It notes the group's history of advocating for local citizens and its special interest in promoting the growth and economic development of the African-American and small business communities.<sup>10</sup> It states that Chatham and its members are disserved by the increasing consolidation in the telecommunications industry and particularly are concerned when large entities have access to sources of capital that are unavailable to small and "socially disadvantaged businesses" seeking to compete with them.<sup>11</sup> Chatham argues that we adopted a "special interpretation" of section 310(b) for Verizon Wireless and asks us either to (1) require Verizon Wireless to provide a statistically valid sample citizenship survey of the shareholders of Verizon Wireless' constituent partners or (2) expressly acknowledge that socially disadvantaged businesses may use the approach used by Verizon Wireless as the "sole test for determining the citizenship of their potential investors under section 310(b) for all services."<sup>12</sup>

5. Subsequently, on November 10, 2008, we granted in the *Verizon Wireless-Alltel Order*, WT Docket No. 08-95, a series of applications filed by Verizon Wireless and Atlantis Holdings LLC seeking approval of the transfer of control to Verizon Wireless of licenses, authorizations, and spectrum manager and *de facto* transfer leasing arrangements through the transfer of control of subsidiaries of Alltel and partnerships in which Alltel had controlling or non-controlling general partnership interests.<sup>13</sup> We also granted a petition for declaratory ruling (IBFS File No. ISP-PDR-20080613-00012) to extend Verizon Wireless' foreign ownership ruling to the licenses and authorizations over which Verizon sought to acquire control in the proceeding.<sup>14</sup> On December 10, 2008, Chatham, which participated in the proceeding leading up to our Verizon Wireless-Alltel decision, filed a petition seeking reconsideration of (1) our rejection of Chatham's proposal to require a divestiture condition and (2) our foreign ownership ruling.<sup>15</sup>

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<sup>7</sup> See Letter from Counsel for Verizon Wireless to Secretary, FCC, IBFS File Nos. ISP-PDR-20070928-00011, -00012 (dated April 8, 2008) (April 8 Letter). The April 8 Letter states that Verizon Wireless is a general partnership, of which Vodafone indirectly owns 45% and Verizon indirectly owns 55%. April 8 Letter at 1. Vodafone and Verizon, which are publicly traded and widely held companies, each worked with a third-party securities processing and investor communications firm to identify the beneficial owners of its shares. April 8 Letter at 2-4. Vodafone calculated that 85.45% of its 53 billion shares is beneficially owned by citizens of the United States and the United Kingdom. April 8 Letter at 3. Verizon calculated that 91.35% of its more than 2.8 billion shares is directly or beneficially owned by U.S. citizens. April 8 Letter at 4.

<sup>8</sup> Petition for Reconsideration in WT Docket No. 07-208.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 4-5.

<sup>13</sup> *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17547, ¶ 234 (granting transfers of control with certain conditions).

<sup>14</sup> *Id.*

<sup>15</sup> Petition for Reconsideration in WT Docket No. 08-95.

### III. VERIZON WIRELESS-RCC PROCEEDING

#### A. Background

6. As noted, in 2008 we issued the *Verizon Wireless-RCC Order* approving the transfer of control applications and extending Verizon Wireless' foreign ownership ruling to the acquired licenses. During this initial phase of the proceeding leading up to the *Verizon Wireless-RCC Order*, Chatham did not file a petition to deny or otherwise comment on the applications and requests for declaratory ruling under section 310(b)(4) of the Act. Therefore, Chatham is not a party to that proceeding with a right to file a petition for reconsideration under section 1.106(b) of the Commission's rules. Section 1.106(b) provides that a non-party seeking to file a petition for reconsideration shall state with particularity the manner in which its interests are adversely affected by the action taken and show good reason why it was not possible for the non-party to participate in the earlier stages of the proceeding.<sup>16</sup> As discussed below, Chatham argues that it meets these requirements.

#### B. Pleadings

7. Chatham contends that our decision in the *Verizon Wireless-RCC Order* to grant the petitions for declaratory ruling under section 310(b)(4) of the Act erred in relying on "registered and beneficial owners' street addresses of record."<sup>17</sup> Chatham claims that the result – which Chatham characterizes as a "special interpretation of Section 310(b) for Verizon Wireless" – "could not reasonably have been anticipated in view of," first, what Chatham states was a "recent affirmation of [Commission] longstanding policy"<sup>18</sup> and, second, what it terms as the *Broadcast Diversity Order's* "categorical rejection" of "any liberalization of its foreign ownership policies" for broadcast services.<sup>19</sup> Chatham also argues that its petition meets the requirements of the Commission's rules "without regard to any participation by Chatham in the initial phase of this proceeding" because, it alleges, the public interest would be served by addressing the "related" section 310(b) issues in a "unified fashion."<sup>20</sup>

8. Verizon Wireless opposes Chatham's petition as procedurally deficient.<sup>21</sup> Among other things, Verizon Wireless argues that Chatham has not shown good reason for its failure to participate in

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<sup>16</sup> 47 C.F.R. § 1.106(b).

<sup>17</sup> Petition for Reconsideration in WT Docket No. 07-208 at 3.

<sup>18</sup> Chatham does not cite to a decision to support its assertion of a "recent affirmation" of a policy against using addresses of record, but it attaches its Petition to Deny in WT Docket No. 08-95. The Petition to Deny in WT Docket No. 08-95 characterized the Commission's 2007 decision in the *América Móvil Order* as a recent rejection of the use of "registered addresses" to determine citizenship under section 310(b)(4). Petition to Deny of Chatham Avalon Park Community Council in WT Docket No. 08-95 (filed Aug. 11, 2008) at 24-25 (Petition to Deny in WT Docket No. 08-95), citing to *Verizon Communications, Inc., Transferor, and América Móvil, S.A. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI)*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195 (2007) (*América Móvil Order*).

<sup>19</sup> Petition for Reconsideration in WT Docket No. 07-208 at 3, citing to *Promoting Diversification of Ownership in the Broadcast Services*, MB Docket Nos. 07-294 *et al.*, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922 (2008) (*Broadcast Diversity Order*).

<sup>20</sup> Petition for Reconsideration in WT Docket No. 07-208 at 3-4.

<sup>21</sup> Verizon Wireless also asserts that Chatham's petition lacks merit, both in misunderstanding the type of information provided by Verizon Wireless and in claiming that our decision was contrary to precedent. Opposition of Verizon Wireless in WT Docket No. 07-208 (filed Aug. 28, 2008) (Opposition in WT Docket No. 07-208) at i-ii. Because we dismiss on procedural grounds, we do not discuss the substantive arguments here.

the first stage of the proceeding as required by section 1.106(b) of the Commission's rules and therefore its petition for reconsideration should be dismissed.<sup>22</sup> Verizon Wireless states that the record in the proceeding provided notice that we would be reviewing Verizon Wireless' foreign ownership and the methodology used to demonstrate compliance with Verizon Wireless' prior ruling under section 310(b)(4).<sup>23</sup> Verizon Wireless observes that we placed the petitions for declaratory ruling on public notice.<sup>24</sup> It further observes that Verizon Wireless filed a letter in the proceeding explaining specifically how the company was using addresses of record obtained from third-party securities processing and investor communications companies to determine the citizenship of shareholders of Verizon and Vodafone.<sup>25</sup> Verizon Wireless asserts that Chatham should have anticipated that we would review this letter and potentially accept the methodology employed in the letter to find Verizon Wireless in compliance with its prior section 310(b)(4) ruling and to extend that ruling to the RCC licenses and authorizations.<sup>26</sup> Additionally, Verizon Wireless argues that the *Broadcast Diversity Order* is irrelevant to the Verizon Wireless-RCC proceeding. It states that in that order we rejected a proposal to raise the section 310(b)(4) benchmark from 25 percent to 49 percent for broadcast licensees.<sup>27</sup> It observes that the use of addresses of record from third-party securities processing and investor communications companies to demonstrate citizenship was not at issue, and states that our conclusions in that order have nothing to do with the issues raised in the Verizon Wireless-RCC proceeding.<sup>28</sup> Finally, Verizon Wireless asserts that Chatham's argument that the public interest would be served by addressing section 310(b) issues in a "unified fashion" does not constitute good reason for Chatham's failure to participate in the proceeding before we issued our decision.<sup>29</sup> It observes that a section 310(b)(4) analysis is a fact-specific, case-by-case analysis and asserts that a unified review would be unlikely to provide much guidance.<sup>30</sup>

9. Chatham claims that it did not have a basis to ask for Commission action until we granted the Verizon Wireless application and "ignored" our own precedent,<sup>31</sup> and thus that Chatham is justified in not having participated in the initial phase of the proceeding.<sup>32</sup> Chatham expressly relies on what it says is a change in circumstances – adoption of a "new, special Verizon Wireless-only test" for foreign ownership that it states is contrary to precedent.<sup>33</sup>

### C. Discussion

10. We find that Chatham fails in its procedural argument under section 1.106(b), which

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<sup>22</sup> Opposition in WT Docket No. 07-208 at 5-7.

<sup>23</sup> *Id.* at 5.

<sup>24</sup> *Id.* at 6.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 6-7, citing to *Broadcast Diversity Order*, 23 FCC Rcd 5922, 5949, ¶ 77.

<sup>28</sup> *Id.* at 7.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Reply of Chatham Avalon Park Community Council in WT Docket No. 07-208 (filed Sept. 9, 2008) (Reply in WT Docket No. 07-208) at 4.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 5.

states that a non-party to a proceeding filing a petition to reconsider an action “shall state with particularity the manner in which the person’s interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.”<sup>34</sup> Chatham did not participate during the earlier stage of the proceeding and, as a non-party, it has not demonstrated that it had good reason for failing to do so. If Chatham was concerned about the effects of consolidation in the wireless market as a result of the proposed acquisition of RCC assets by Verizon Wireless,<sup>35</sup> then it should have filed comments in the initial phase of the proceeding to bring those concerns before the Commission, rather than waiting until after we issued our decision to determine whether it liked the result. We also are unpersuaded by Chatham’s assertion that it did not participate in a timely fashion because it was unaware that the Commission would adopt what it characterizes as a “special Verizon Wireless-only test for foreign ownership.”<sup>36</sup> We did not apply a special Verizon Wireless-only test.<sup>37</sup> Interested parties could have anticipated from the public record in this proceeding that we would rule on the acceptability of the proffered beneficial owner address information. We gave public notice of Verizon Wireless’ request to extend its prior foreign ownership ruling to encompass the acquisition of control of the RCC entities and licenses.<sup>38</sup> Verizon Wireless subsequently submitted to the public record a letter specifically explaining its use of beneficial owner addresses obtained from third-party securities processing and investor communications firms to determine the citizenship of shareholders of Verizon and Vodafone.<sup>39</sup> Chatham thus had public notice of the Verizon Wireless petition, access to the public record, and opportunity to comment prior to the decision. It did not comment, and cannot claim surprise at the decision after its failure to do so.

11. Chatham also cannot reasonably argue that it had good reason for not participating earlier because of our decision in the *Broadcast Diversity Order*.<sup>40</sup> The *Broadcast Diversity Order*, declining to adopt rules to permit up to 49 percent foreign investment in U.S. parents controlling broadcast licenses under section 310(b)(4),<sup>41</sup> is irrelevant to our decision in WT Docket No. 07-208, which involved common carrier wireless licenses, a class of licenses in which the Commission already permits foreign investment of greater than 25 percent.<sup>42</sup>

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<sup>34</sup> 47 C.F.R. § 1.106(b).

<sup>35</sup> See Reply in WT Docket No. 07-208 at 2. See also Petition for Reconsideration in WT Docket No. 07-208 at 2.

<sup>36</sup> Reply in WT Docket No. 07-208 at 5.

<sup>37</sup> See *infra* Section IV, ¶ 27. Indeed, we provided a reasoned explanation for the approach we took in the *Verizon Wireless-RCC Order*. See *id.* at ¶¶ 25-26.

<sup>38</sup> *Verizon Wireless and Rural Cellular Corporation Seek FCC Consent to Transfer Control of Licenses, Spectrum Manager Leases, and Authorizations*, WT Docket No. 07-208, Public Notice, 22 FCC Rcd 18356 (WTB & Int’l Bur., 2007) (assigning IBFS File Nos. ISP-PDR-20070928-00011 and -00012 to the petitions for declaratory ruling).

<sup>39</sup> See April 8 Letter.

<sup>40</sup> See Petition for Reconsideration in WT Docket No. 07-208 at 3-4.

<sup>41</sup> *Broadcast Diversity Order*, 23 FCC Rcd at 5922, ¶ 77 (declining to relax foreign ownership rules to permit non-controlling foreign investment in the U.S. parents of broadcast licensees). See also Initial Comments of the Diversity and Competition Supporters in MB Docket No. 06-121 (filed Oct. 1, 2007) at 37-39 (supporting section 310(b)(4) waiver standard of up to 49% foreign equity and voting interests in U.S. parents of broadcast licensees).

<sup>42</sup> This differing treatment between foreign investment in broadcast and common carrier licensees occurs because the Commission historically has treated common carrier properties more liberally under its discretionary authority in section 310(b)(4), not because of our action in the *Verizon Wireless-RCC Order*. In part, this more liberalized approach for foreign investment in common carrier properties derives from the Commission’s 1997 decision to adopt a rebuttable presumption that foreign investment by companies from World Trade Organization (WTO) (continued....)

12. We therefore dismiss the petition for reconsideration filed in the Verizon Wireless-RCC proceeding because Chatham has not shown good reason why it failed to participate in the initial phase of the proceeding.<sup>43</sup> We now address Chatham's petition for reconsideration in the Verizon Wireless-Alltel matter.

#### IV. VERIZON WIRELESS-ALLTEL PROCEEDING

##### A. Background

13. Verizon Wireless, in filing its petition for declaratory ruling in the Verizon Wireless-Alltel proceeding in June 2008, asked the Commission to find that the public interest would be served by extending its existing foreign ownership ruling issued in 2000<sup>44</sup> to encompass the to-be-acquired entities and their Commission licenses and spectrum leases. To support its request, Verizon Wireless provided the same foreign ownership information that it had supplied two months earlier to support its request for a similar declaratory ruling in the Verizon Wireless-RCC proceeding.<sup>45</sup> In the *Verizon Wireless-RCC Order* issued in July 2008, we found that the information Verizon Wireless had relied on to demonstrate compliance with its foreign ownership ruling – the addresses of record of the beneficial owners of shares of Vodafone and Verizon – was reasonable in light of the special circumstances of the companies concerned, given that both Vodafone and Verizon are widely held, publicly traded companies with a very large number of issued and outstanding shares.<sup>46</sup>

14. Chatham, in its August 2008 petition to deny the transfers of control of the Alltel licenses to Verizon Wireless, contended that, in the *América Móvil Order*, the Commission expressly rejected the use of shareholder addresses as a valid means for applicants to ascertain the citizenship of shareholders under section 310(b).<sup>47</sup> It argued that “there is no rational justification for a special liberalized interpretation of Section 310(b) that applies only to Verizon Wireless.”<sup>48</sup> It asserted that we should require Verizon Wireless to undertake a statistically valid citizenship survey or expressly determine that “socially disadvantaged businesses” likewise may use the same approach as the “sole test” for

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Member countries in U.S. entities controlling common carrier licensees will not raise competitive concerns in the U.S. market. *See generally Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997) (*Foreign Participation Order*), on reconsideration, 15 FCC Rcd 18158 (2000).

<sup>43</sup> We need not address Verizon Wireless' standing argument because we are dismissing Chatham's petition on other procedural grounds.

<sup>44</sup> In the 2000 *Vodafone-Bell Atlantic Order*, the Bureaus authorized Verizon Wireless “to be indirectly owned by Vodafone in an amount up to 65.1 percent.” *Applications of Vodafone AirTouch, Plc and Bell Atlantic Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd 16507 (WTB & Int'l Bur., 2000) (*Vodafone-Bell Atlantic Order*).

<sup>45</sup> See April 8 Letter.

<sup>46</sup> *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12525-26, ¶ 149. In its foreign ownership showing, Verizon Wireless stated that Vodafone had identified the beneficial owners of 96.68% of its shares and determined each beneficial owner's citizenship to be the country identified in the owner's address of record. *Id.* at 12424-25, ¶ 147. Additionally, it stated that Verizon also had determined the citizenship of its shareholders to be the country identified in each beneficial owner's address of record. *Id.* at 12525, ¶ 148. The information Verizon Wireless provided indicated that non-U.S. ownership of Verizon (8.65%) and non-U.S., non-U.K. ownership of Vodafone (14.55%) was below the 25% aggregate allowance specified for such ownership in Verizon Wireless' foreign ownership ruling issued in 2000 in the *Vodafone-Bell Atlantic Order*. *Id.* at 23 FCC Rcd 12525, ¶ 148 n.473.

<sup>47</sup> Petition to Deny in WT Docket No. 08-95 at 24-26, citing to *América Móvil Order*, 22 FCC Rcd 6195.

<sup>48</sup> *Id.* at 3.

determining the citizenship of their potential investors under section 310(b).<sup>49</sup>

15. We concluded, in the *Verizon Wireless-Alltel Order* issued in November 2008, that the foreign ownership of Verizon Wireless remained in compliance with the foreign ownership ruling issued in 2000.<sup>50</sup> We determined, pursuant to section 310(b)(4) of the Act,<sup>51</sup> that extending the ruling to the Alltel licenses over which Verizon Wireless would acquire a controlling ownership interest would serve the public interest.<sup>52</sup> We rejected Chatham's arguments. We stated that Chatham may have misconstrued the methodology Verizon Wireless used to demonstrate compliance, observing that, in contrast to the foreign ownership information we had rejected in the *América Móvil Order*, the Verizon Wireless data did not rely on the addresses of custodian banks and brokers that hold shares for those beneficial owners electing not to possess stock certificates, but rather relied on the addresses of record of nearly 100 percent of the beneficial owners of the stock of Verizon and Vodafone, the partners in the Verizon Wireless venture.<sup>53</sup> We observed that we previously had permitted public companies to use methods other than random surveys, including the collection of shareholder addresses, on a fact-specific, case-by-case basis.<sup>54</sup> We stated that Chatham had not provided, and we did not discern, any basis for concluding the information Verizon Wireless had provided was inaccurate, could not be relied on, or was insufficient for purposes of demonstrating compliance with Verizon Wireless' foreign ownership ruling under section 310(b)(4) of the Act.<sup>55</sup> We noted our agreement with Chatham's argument that a public company that has reason to know the citizenship or principal places of business of particular beneficial owners (for example, based on notifications made pursuant to federal securities regulations) should include that information in the company's citizenship calculations.<sup>56</sup> As discussed below, Chatham subsequently petitioned for reconsideration of our foreign ownership ruling.

#### B. Pleadings

16. In its petition for reconsideration, Chatham asserts that the Commission afforded special treatment to Verizon Wireless' showings regarding its compliance with section 310(b)(4).<sup>57</sup> In particular, Chatham contends that, contrary to precedent and without supporting analysis, we permitted Verizon Wireless to demonstrate compliance using registered and beneficial owners' "street addresses of record," which it asserts is an approach the Commission "expressly, definitively, and consistently" has rejected "for everyone but Verizon Wireless."<sup>58</sup> Chatham asserts that we either must rule that socially disadvantaged businesses likewise may use "registered addresses" as "the sole test" for determining the citizenship of their potential investors under section 310(b)(4) "for all services," or require Verizon Wireless to provide a "statistically valid sample survey establishing the citizenship of the shareholders of Verizon Wireless' constituent partners and demonstrating eligibility for a Section 310(b)(4) public interest determination based upon the multilevel analysis that the Commission requires from other

<sup>49</sup> *Id.* at ii, 3.

<sup>50</sup> *Verizon Wireless-Alltel Order*, 23 FCC Rcd 17543, ¶ 226.

<sup>51</sup> 47 U.S.C. § 310(b)(4).

<sup>52</sup> *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17545, ¶ 230.

<sup>53</sup> *Id.* at 17544, ¶ 228.

<sup>54</sup> *Id.* at 17544, ¶ 229.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 17545, ¶ 229 n.795.

<sup>57</sup> Petition for Reconsideration in WT Docket No. 08-95 at 2.

<sup>58</sup> *Id.* at i, 7-12.



applicants.”<sup>59</sup>

17. Verizon Wireless responds that Chatham’s petition is mistakenly premised on the argument that the Commission has “expressly, definitively, and consistently rejected” the type of foreign ownership methodology used by Verizon Wireless and that Verizon Wireless’ showing conflicts with the *América Móvil Order*.<sup>60</sup> It observes that the *Verizon Wireless-Alltel Order* provided examples of prior Commission use of shareholder addresses and distinguished the methodology used by Verizon Wireless from the approach we rejected in the *América Móvil Order*.<sup>61</sup>

18. Chatham replies that we erred in applying to Verizon Wireless an “entirely different and far more liberal” definition of what constitutes foreign ownership than it allegedly applies to all other applicants.<sup>62</sup> It asserts that Commission precedent rejects a presumption of citizenship from owner mailing addresses and requires a survey for widely dispersed interests.<sup>63</sup> In this regard, it argues that Verizon Wireless, at best, had third parties take one additional step above the nominee holders of shares and presumed citizenship based on the address of the holder at that next level.<sup>64</sup> It contends that the street address supplied by a shareholder has no necessary relationship to the section 310(b)(4) citizenship status of a shareholder under the interpretation of section 310(b)(4) that it says the Commission applies to everyone but Verizon Wireless.<sup>65</sup> It also contends that decisions we cited are not good precedent.<sup>66</sup> It argues that there is no fact-specific basis for distinguishing our treatment of Verizon Wireless’ foreign ownership showings from the demonstrations the Commission has required of other applicants.<sup>67</sup>

### C. Discussion

19. The Commission reviews foreign ownership in a U.S. parent of a common carrier radio station licensee under section 310(b)(4) of the Act and the Commission’s foreign ownership policies adopted in the *Foreign Participation Order*.<sup>68</sup> Section 310(b)(4) establishes a 25 percent benchmark for ownership by foreign individuals, corporations and governments in U.S.-organized entities that control U.S. common carrier licensees. This section also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.<sup>69</sup> The presence of aggregated alien equity or voting interests in a common carrier licensee’s U.S. parent in excess of 25 percent triggers the applicability of section 310(b)(4)’s statutory benchmark. Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine whether the “public

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<sup>59</sup> *Id.* at i-ii, 24-25.

<sup>60</sup> Joint Opposition of Verizon Wireless in WT Docket No. 08-95 (filed Dec. 22, 2008) (Joint Opposition in WT Docket No. 08-95) at 16.

<sup>61</sup> *Id.* at 16-17.

<sup>62</sup> Reply of Chatham Avalon Park Community Council in WT Docket No. 08-95 (filed Jan. 5, 2009) (Reply in WT Docket No. 08-95) at 3-4.

<sup>63</sup> *Id.* at 4.

<sup>64</sup> *Id.* at 6-7.

<sup>65</sup> *Id.* at 7.

<sup>66</sup> *Id.* at 7-8.

<sup>67</sup> *Id.* at 8-9.

<sup>68</sup> 47 U.S.C. § 310(b)(4); *Foreign Participation Order*, 12 FCC Rcd at 2394-42, ¶¶ 111-118.

<sup>69</sup> 47 U.S.C. § 310(b)(4).

interest will be served by the refusal or revocation of such license.<sup>70</sup>

20. Chatham argues that our approval of Verizon Wireless' foreign ownership showing in the *Verizon Wireless-Alltel Order* contradicts established policy and precedent without providing a reasoned explanation for applying a different standard to Verizon Wireless.<sup>71</sup> According to Chatham, we did not properly distinguish prior precedent<sup>72</sup> or describe the facts and circumstances that justified allowing Verizon Wireless to rely on shareholder addresses.<sup>73</sup> Chatham contends that we adopted a "special rule" for Verizon Wireless that permits it to use beneficial owner addresses of record without allowing others to provide the same type of showing.<sup>74</sup> We disagree.

21. First, as discussed above, prior Commission decisions have permitted the use of shareholder addresses of record as proxies for citizenship on a fact-specific, case-by-case basis.<sup>75</sup> The *Verizon Wireless-RCC Order* rendered a decision as to whether a common carrier licensee that is wholly owned by publicly traded, widely held companies remains in compliance with its existing foreign ownership ruling issued under the discretionary provision of section 310(b)(4). In the *Verizon Wireless-RCC Order*, based on the record in that proceeding, we set forth our rationale for permitting Verizon Wireless to rely on beneficial owner addresses of record collected and verified by third-party investor communications firms as proxies for citizenship of the shareholders of its constituent partners, both of which are publicly traded, widely held companies.<sup>76</sup> In the *Verizon Wireless-Alltel Order*, we followed that precedent.<sup>77</sup>

22. As discussed above, Chatham did not file a petition to challenge the methodology used by Verizon Wireless in the Verizon Wireless-RCC proceeding.<sup>78</sup> It challenged the methodology for the first time in a petition to deny the Verizon Wireless-Alltel applications. We addressed and rejected

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<sup>70</sup> *Id.*

<sup>71</sup> Petition for Reconsideration in WT Docket No. 08-95 at 7.

<sup>72</sup> *Id.* at 13-21.

<sup>73</sup> *Id.* at 21-24.

<sup>74</sup> *Id.* at 10.

<sup>75</sup> See *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17544, ¶ 229. See also *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended and Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P., Petition for Expedited Action for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IBFS File Nos. ISP-PDR-20070314-00004 and ISP-PDR-20080111-00001, Order and Declaratory Ruling, 23 FCC Rcd 4436 (2008) (*2008 MSV Order*).

<sup>76</sup> *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12524-26, ¶¶ 147-49. See also *infra* ¶¶ 25-26.

<sup>77</sup> *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17543, ¶¶ 226. The Commission acknowledged in the *Verizon Wireless-Alltel Order* that licensees with widely held securities have traditionally used random surveys to ascertain foreign ownership and cited the section of the International Bureau's non-binding *Foreign Ownership Guidelines* entitled "Corporate Applicants and Shareholder Polling in the Broadcast Context," which recommends the use of shareholder surveys. *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17544 & n.792 (citing *Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses*, Public Notice, 19 FCC Rcd 22612, 22639-41 (Int'l Bur., 2004), erratum, 21 FCC Rcd 6484 (Int'l Bur., 2006) (*Foreign Ownership Guidelines*), recon. pending. As noted above, the Commission also explained why it allowed Verizon Wireless to use addresses of record in this case. As discussed below, common carrier licensees in addition to Verizon Wireless have used beneficial owner addresses in subsequent proceedings. See *infra* ¶ 27.

<sup>78</sup> See *supra* ¶ 4.

Chatham's arguments in the *Verizon Wireless-Alltel Order*.<sup>79</sup> Chatham now reiterates its argument that reliance on beneficial owner addresses of record contradicts established policy and precedent.<sup>80</sup>

23. The "established policy and precedent" to which Chatham presumably refers involves the ascertainment of foreign ownership in the U.S. parents of broadcast applicants or licensees.<sup>81</sup> As we have indicated prior to the two proceedings at issue here, however, we will not necessarily be bound by our broadcast precedent in applying the discretionary provision of section 310(b)(4) to a U.S. entity that controls a common carrier applicant or licensee.<sup>82</sup> Indeed, the *Foreign Ownership Guidelines* advised the public in 2004 that the Commission "may apply" its broadcast precedent "where applicable, to foreign ownership issues presented in the common carrier context."<sup>83</sup> The *Foreign Ownership Guidelines* does not reference a Commission policy of adhering to the Commission's broadcast precedent for all purposes under section 310(b)(4) because, with one exception, the Commission has not authorized the U.S. parent of a broadcast licensee to exceed that section's 25 percent benchmark.<sup>84</sup> By contrast, the Commission has permitted above-benchmark foreign ownership in the U.S. parents of common carrier licensees and, in the 1997 *Foreign Participation Order*, we adopted an open entry standard for foreign investment from WTO Member countries in common carrier radio licensees under the discretionary provision of section 310(b)(4).<sup>85</sup>

<sup>79</sup> *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17543-45, ¶¶ 227-230.

<sup>80</sup> Petition for Reconsideration in WT Docket No. 08-95 at 7-24, Reply in WT Docket No. 08-95 at 4.

<sup>81</sup> Chatham's pleadings are not specific as to which earlier Commission decisions Chatham considers to be "established policy and precedent." Other than *América Móvil*, which we discussed in the *Verizon Wireless-Alltel Order*, Chatham does not cite in support of its arguments any specific Commission decision preceding the *Verizon Wireless-RCC Order* or the *Verizon Wireless-Alltel Order* that required us to review the methodology used by a radio station applicant or licensee for determining the direct or indirect foreign ownership in the U.S. parent of the applicant or licensee under the discretionary provision of section 310(b)(4) of the Act.

<sup>82</sup> The Commission historically has recognized different policy concerns for foreign ownership in the U.S. parents of broadcast licensees. See, e.g., *Application of GRC Cablevision, Inc., Charleston, Clarksville, Jeffersonville, and Sellersburg, Ind. for Construction Permit in the Cable Television Relay Service*, Memorandum Opinion and Order, 47 F.C.C. 2d 467, 468, ¶ 6 (1974) (stating that alien ownership in broadcast television "presents different questions"); *Cable & Wireless, Inc.*, Declaratory Ruling and Memorandum Opinion, Order, Authorization and Certificate, 10 FCC Rcd 13177, 13179, ¶ 18 (1995) (stating that "...the Commission traditionally has found that alien ownership of common carrier radio licensees raises far fewer policy concerns than that of radio broadcast licensees. We have concluded that concern about the effect of alien ownership is lessened when common carrier radio licenses are involved because they are 'passive' in nature and there is no control over the content of transmission."); *Application of Fox Television Stations, Inc.*, Second Memorandum Opinion and Order, 11 FCC Rcd 5714, 5722 & 5722 n.7 (1995) (*Fox II*) (stating that presumption in broadcast area that public interest will be served by denying licenses to entities controlled by U.S.-organized companies with alien ownership above 25% does not necessarily apply outside of broadcast area); *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order, 11 FCC Rcd 3873, 3946-47, ¶¶ 192-193 (1995) (*Market Entry Order*) (stating that "foreign ownership of broadcast licenses presents different questions than for other types of radio spectrum licenses" and "affording broadcast licenses disparate treatment from common carrier licenses is consistent with the distinction that the Commission has consistently drawn in applying Section 310(b)(4)"); see also *Foreign Ownership Guidelines*, 19 FCC Rcd at 22640, 22615 n.1.

<sup>83</sup> *Foreign Ownership Guidelines*, 19 FCC Rcd at 22640 (emphasis added); *id.* at 22615 n.1.

<sup>84</sup> The sole exception is our decision in *Fox II*, 11 FCC Rcd 5714. We stated in *Fox II* that "[o]ur decision here is based upon unique equitable factors that the Commission does not expect to face again." *Id.* at 5725, ¶ 27 (footnote omitted).

<sup>85</sup> *Foreign Participation Order*, 12 FCC Rcd at 23940-42, ¶¶ 111-118. See also *supra* note 42.

24. Our decision in the *América Móvil Order*, which did require us to review the foreign ownership of a common carrier applicant under the policies adopted in the *Foreign Participation Order*, is distinguishable from the case at hand. In the *América Móvil* proceeding, the applicant had proffered beneficial owner address information for the holders of less than one percent of the company's total capital stock.<sup>86</sup> As we explained in the *Verizon Wireless-Alltel Order*, the address information provided by América Móvil relied primarily on broker and bank addresses of record, not on beneficial owner addresses.<sup>87</sup> Thus, as a practical matter we were unable to use beneficial owner addresses to determine that non-WTO Member investment in América Móvil did not exceed 25 percent, and, based on the record, we declined to do so, particularly because we were able to rely on other evidence to support our public interest holding.<sup>88</sup> We therefore reject Chatham's sweeping assertion that we committed error in the *Verizon Wireless-Alltel Order* by establishing "a new definition of foreign ownership under Section 310(b) just for Verizon Wireless without overruling *America Movil*."<sup>89</sup> We are also not persuaded by Chatham's argument that we relied inappropriately on the two MSV decisions.<sup>90</sup> The decision relied on

<sup>86</sup> Of the three classes of stock issued by América Móvil, Class A, Class AA and Class L, the record contained address information for those Class A and Class L shares that traded as American Depository Shares (ADSs). Only 29.9% of Class A shares traded as ADSs, and of those shares only 20.74%, or 0.035 billion Class A shares, represented beneficial owner addresses. The remaining 79.26% of the 29.9% of Class A shares held as ADSs represented bank and broker addresses. See Letter from Counsel for América Móvil to Secretary, FCC in WT Docket No. 06-113 (filed Feb. 26, 2007) (*América Móvil* February 26 Letter), at 3-4. Similarly, beneficial owner addresses represented only 2.03% of the 64.2% of América Móvil's Class L shares held as ADSs and for which applicant provided information, or only 0.300 billion Class L shares, with the remaining 97.97% of Class L ADSs identified by custodian bank and broker addresses. *América Móvil* February 26 Letter at 4. Together, the ADS beneficial owner addresses represented less than 1% of all shares – 0.035 billion of Class A shares plus 0.300 billion of Class L shares, for 0.335 billion out of 35.303 billion total shares.

<sup>87</sup> We found that Verizon Wireless had proffered beneficial owner addresses for almost 100% percent of Verizon's and Vodafone's shares and, unlike América Móvil, did not rely on "the addresses of custodian banks and brokers that hold shares for the more numerous owners that have chosen not to possess the stock certificates." *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17544, ¶ 228 (quoting *América Móvil*, 22 FCC Rcd at 6222-23, ¶ 59). In the América Móvil proceeding, by contrast, the proffered broker-dealer and bank addresses had constituted 41.42% of total shares (0.135 billion Class A and 14.487 billion Class L), while, as noted, the beneficial owner addresses had represented less than 1% of all shares. See generally *América Móvil* February 26 Letter.

<sup>88</sup> See *América Móvil Order*, 22 FCC Rcd at 6223, ¶ 59. Even if we had used the proffered beneficial owner addresses, which represented less than 1% of all shares, we would have been unable to determine that shareholders from non-WTO Member countries held no more than 25% of América Móvil's total capital stock, given that América Móvil had not otherwise identified the citizenship or principal places of business of 57.54% of its total capital shares. *Id.* at 6219-20, ¶ 55, 6221-22, ¶ 57. Notwithstanding the 57.54% undisclosed ownership interests in América Móvil, we ultimately were able to rely on the corporate governance structure of América Móvil, which prevents Class L shareholders from dominating the management of corporate affairs and minimizes their influence, to find the foreign ownership holdings to be in the public interest. *Id.* at 6224, ¶ 63.

<sup>89</sup> Petition for Reconsideration in WT Docket No. 08-95 at 16.

<sup>90</sup> Petition for Reconsideration in WT Docket No. 08-95 at 16-21. See also *Motient Corporation and Subsidiaries, Transferors, and SkyTerra Communications, Inc., Transferee, Application for Authority to Transfer Control of Mobile Satellite Ventures Subsidiary LLC*, WC Docket No. 06-106, Memorandum Opinion and Order and Declaratory Ruling, 21 FCC Rcd 10198, 10216, ¶ 41 and ¶ 41 n.114 (WTB, OET & Int'l Bur., 2006) (*2006 MSV Order*) (allowing applicant to use shareholder addresses to establish foreign ownership of Motient, a public company holding shares in the applicant); *2008 MSV Order*, 23 FCC Rcd 4436, 4461-62, Appendix B, ¶¶ 24-25 (following the Bureau-level decision in the *2006 MSV Order* and allowing applicant to use shareholder address information submitted in that proceeding for Motient). The Commission did not discuss the shareholder address methodology in the MSV decisions, but the transactions at issue there involved the ascertainment of foreign (continued....)

those cases for the proposition that the agency “has permitted public companies to use methods other than random surveys, including the collection of shareholder addresses, on a fact-specific, case-by-case basis.”<sup>91</sup> In these cases, the Commission sanctioned the use of methods other than random surveys, and they therefore support the proposition for which we cited them.<sup>92</sup>

25. Second, we provided a reasoned explanation for the approach we took in the *Verizon Wireless-Alltel Order*. The determinative findings there are the same as in the *Verizon Wireless-RCC Order*,<sup>93</sup> and we confirm our determination in the *Verizon Wireless-Alltel Order* that these findings properly distinguished both cases from prior broadcast and common carrier precedent.<sup>94</sup> Specifically, we considered several facts to be relevant to our decisions to accept beneficial owner addresses as a proxy for citizenship of Verizon’s and Vodafone’s shareholders. Shares of both companies were publicly traded and widely held.<sup>95</sup> Both companies had a very large number of shares,<sup>96</sup> a fact that Chatham argues is irrelevant in assessing the burdens associated with performing a survey that uses a sampling

(Continued from previous page)

ownership of a widely held, publicly traded company that owned interests in the U.S. parent of MSV, a common carrier licensee, and MSV used beneficial owner addresses to determine shareholders’ citizenship. *See, e.g.,* Mobile Satellite Ventures Subsidiary LLC, Petition for Declaratory Ruling under Section 310 of the Communications Act, as Amended, IBFS File No. ISP-PDR-20070314-00004 (filed Mar. 14, 2007) at 14 n.44 (explaining that third-party securities-related services provider had furnished beneficial owner addresses used to analyze citizenship of shareholders of widely held, publicly traded shares).

<sup>91</sup> *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17544, ¶ 229 n.794 and accompanying text.

<sup>92</sup> The *Verizon Wireless-Alltel Order* also cited to *WWOR-TV* as helping to inform its decision. *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17544, ¶ 229 n.794. *See also Applications of WWOR-TV, Inc., for Transfer of Control of Station WWOR-TV, Licensee of Station WWOR-TV, Channel 9 Secaucus, New Jersey*, File No. BTCTT-901127KE, Memorandum Opinion and Order, 6 FCC Rcd 6569, 6572, ¶ 13 (1991) (*WWOR-TV*), *appeal dismissed sub nom. Garden State Broadcasting Ltd. Partnership v. F.C.C.*, 996 F.2d 386 (D.C. Cir. 1993) (allowing publicly traded company to use shareholder mailing addresses to show that its foreign ownership was well under the 25% foreign ownership benchmark of section 310(b)(4)). We recognize that we relied to a more limited extent on shareholder addresses in *WWOR-TV* and that the licenses at issue there were broadcast licenses, not common carrier licenses. *WWOR-TV* did not sanction reliance on mailing addresses as a substitute for random surveys in the broadcast context, but it did find the small percentage of foreign mailing addresses to be relevant to its determination that it could rely in part on the applicant’s most recent citizenship survey and that a new survey was not necessary at that time. *WWOR-TV*, 6 FCC Rcd 6569, 6572, ¶ 13. Notwithstanding our conclusion that beneficial owner addresses may be sufficiently reliable indicators of citizenship in cases involving common carriers, as in the case before us here, we emphasize that our decision in *WWOR-TV* stands for the proposition that such addresses are not a substitute for the more reliable method of statistical surveys in the broadcast context given the different policy concerns in that service.

<sup>93</sup> *See Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17543, ¶ 226 (stating that “[w]e find the beneficial ownership information that Verizon Wireless has submitted for Vodafone and Verizon sufficient to demonstrate compliance with its section 310(b)(4) ruling for the same reasons discussed in the *Verizon Wireless-RCC Order*”).

<sup>94</sup> *See Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17543-45, ¶¶ 226-30. As noted, Chatham did not file a petition to deny the requests for declaratory ruling in the Verizon Wireless-RCC proceeding, and we thus did not discuss in that proceeding the distinctions between the treatment of broadcast and common carrier transactions under the discretionary provision of section 310(b)(4).

<sup>95</sup> *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12525-26, ¶ 149.

<sup>96</sup> *Id.* As of 2008, Verizon had more than 2.8 billion shares issued and outstanding, of which only 0.333 billion were held by registered shareholders while approximately 2.517 billion were held in street name through brokerage accounts. April 8 Letter at 3-4. As of 2008, Vodafone had 53 billion shares issued and outstanding. April 8 Letter at 2-3.

methodology.<sup>97</sup> Chatham argues that “[t]he sample size required for a statistically valid sample does not vary linearly with the size of the population to be sampled, however, so the raw number of shares outstanding cannot justify special treatment for Verizon Wireless.”<sup>98</sup> In this regard, we note that Chatham does not contend that the required sample size is unaffected by the number of shares. In any event, the costs and burdens associated with performing a survey involving widely held securities are driven not just by the number of shareholders and outstanding shares but also by regulatory factors.<sup>99</sup> Thus, we affirm our conclusion that it would be difficult and costly for Vodafone and Verizon to determine the citizenship or principal place of business of their beneficial owners other than by using the beneficial owner’s address of record, and that it would be equally if not more difficult to also trace the direct or indirect foreign ownership of the beneficial owners themselves given the widely-held nature of Verizon and Vodafone shares. Butressing these findings is the fact that requiring use of a survey would have necessitated that Vodafone and Verizon each perform a survey, at a cost to each company’s shareholders.<sup>100</sup>

26. We also considered of decisional significance the fact that the transaction involved only the transfer of control of common carrier wireless licensees to Verizon Wireless and therefore did not present the issue of whether the Commission should exercise its discretion to permit a broadcast licensee to exceed the 25 percent benchmark in section 310(b)(4).<sup>101</sup> As explained above, the Commission with one exception has not allowed foreign ownership of a broadcast licensee to exceed the 25 percent

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<sup>97</sup> Petition for Reconsideration in WT Docket No. 08-95 at 23-24 n.58.

<sup>98</sup> *Id.*

<sup>99</sup> *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12525-26, ¶ 149; *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17543, ¶ 226. Publicly traded companies typically do not know the identities of all beneficial owners of their shares. In many cases, a nominee, such as a broker or bank, holds the shares in accounts with The Depository Trust Company, which appears as the record holder of the shares in the company’s books. Securities and Exchange Commission (SEC) rules prohibit intermediaries between the company and the beneficial owner from disclosing to a company the identity of beneficial owners who object to such disclosure. See generally Alan L. Beller & Janet L. Fisher, *The OBO/NOBO Distinction in Beneficial Ownership: Implications for Shareowner Communications and Voting*, Feb. 2010, available at [www.cii.org/UserFiles/file/CIH%20White%20Paper%20-%20The%20OBO-NOBO%20Distinction%20in%20Beneficial%20Ownership%20February%202010.pdf](http://www.cii.org/UserFiles/file/CIH%20White%20Paper%20-%20The%20OBO-NOBO%20Distinction%20in%20Beneficial%20Ownership%20February%202010.pdf) (visited Apr. 12, 2011); *Concept Release on the U.S. Proxy System*, 75 F.R. 42932, 42999 (SEC, July 22, 2010), available at [www.sec.gov/rules/concept/2010/34-62495.pdf](http://www.sec.gov/rules/concept/2010/34-62495.pdf) (visited Apr. 12, 2011) (When a beneficial owner objects to disclosure of its name and addresses to the issuer, the beneficial owner may be contacted only by the securities intermediary with the customer relationship with the beneficial owner, and not by the issuer. According to one estimate, 70-80% of all public issuers’ shares are held in street name, and 75% of those shares, or 52-60% of all shares, are held by objecting beneficial owners.); see also Securities Exchange Act of 1934, 15 U.S.C. § 78n(b); 17 C.F.R. § 240.14b-1(b)(3)(i) (broker or dealer non-objecting beneficial owner list); 17 C.F.R. § 240.14b-2(b)(4)(ii) (bank consenting owner and non-objecting beneficial owner lists).

<sup>100</sup> *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12526, ¶ 149; *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17543, ¶ 226. Moreover, given that SEC rules prohibit intermediaries from providing an issuer with the identity of objecting beneficial owners, we are unconvinced by Chatham’s suggestion that use of a survey would enable Verizon Wireless to “glance down the list of investors” so that Verizon Wireless could determine non-U.S. or non-WTO status. See Petition for Reconsideration in WT Docket No. 08-95 at 11 n.23. In addition, while a beneficial owner address is not necessarily reflective of the owner’s citizenship in all cases, we find it a more reliable indicator of the owner’s citizenship than the street address of a broker or bank, which is likely to be holding shares on behalf of numerous clients. See, e.g., *supra* note 87 (in the América Móvil proceeding, broker-dealer and bank addresses constituted 41.42% of all shares).

<sup>101</sup> *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12526, ¶ 150 n.474; *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17543, ¶ 226.

benchmark in section 310(b)(4).<sup>102</sup> By contrast we had adopted an open entry standard for WTO Member investment in common carrier radio licensees in the *Foreign Participation Order*, and this is the standard that applies to the declaratory ruling that Chatham challenges here.<sup>103</sup> We went on to find that, “in these circumstances, any benefit to our policies from requiring Vodafone and Verizon to make further inquiries of their shareholders is outweighed by the burden this would impose on investors in the public markets and the possible financial impact such inquiries may have in the trading of Vodafone’s and Verizon’s shares.”<sup>104</sup> We affirm our earlier findings and conclude that under the circumstances of this case, it was reasonable for Verizon Wireless to use beneficial owner addresses as a proxy for shareholder citizenship.

27. Third, we reject Chatham’s contention that, in relying on beneficial owner addresses, Verizon Wireless received the benefit of a “special rule” not available to other similarly situated applicants.<sup>105</sup> Other common carrier applicants and licensees with similar organizational structures – those that are wholly or partly owned by publicly traded, widely held companies as opposed to companies with more readily identifiable shareholders – may propose to use beneficial owner address information for the purpose of establishing citizenship of holders of their widely held shares, consistent with Commission precedent. Indeed, others already have done so.<sup>106</sup>

28. Finally, Chatham appears incorrectly to assume that reliance on beneficial owner addresses of record relieves an applicant of the requirement to submit citizenship information up the vertical chain of ownership.<sup>107</sup> As we stated in the *Verizon Wireless-Alltel Order*, the Commission

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<sup>102</sup> See *supra* ¶ 23.

<sup>103</sup> The Commission declined to propose any changes to its foreign ownership rules and policies for broadcast applicants and licensees in the notice of proposed rulemaking that culminated in adoption of the *Foreign Participation Order*. In so doing, the Commission noted that, unlike common carrier licenses, broadcast licenses are not covered by the WTO Basic Telecommunications Agreement. It also noted that the Commission had previously found that broadcast licenses present different issues than common carrier licenses under section 310(b) and it “[did] not propose to disturb that finding here.” *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, Order and Notice of Proposed Rulemaking, 12 FCC Rcd 7847, 7875, ¶ 71 (1997) (citing *Market Entry Order*, 11 FCC at 3945-47, ¶¶ 190-194).

<sup>104</sup> *Verizon Wireless- RCC Order*, 23 FCC Rcd at 12526, ¶ 149; *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17543, ¶ 226.

<sup>105</sup> Petition for Reconsideration in WT Docket No. 08-95 at 10.

<sup>106</sup> See *Iridium Holdings LLC and Iridium Carrier Holdings LLC, Transferors and GHL Acquisition Corp., Transferee, Applications for Consent to Transfer Control of Iridium Carrier Services LLC, Iridium Satellite LLC, and Iridium Constellation LLC*, IB Docket No. 08-232, Memorandum Opinion and Order and Declaratory Ruling, 24 FCC Rcd 10725, 10743-44, ¶ 41, 10745, ¶ 43 (Int’l Bur., 2009) (accepting reliance on beneficial owner addresses to ascertain the citizenship of shareholders in a publicly traded U.S. corporation and a publicly traded U.S. investment bank that each held minority interests in the U.S. parent of a common carrier licensee); *TerreStar Networks Inc., Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IBFS File No. ISP-PDR-20080229-00004, Order and Declaratory Ruling, 24 FCC Rcd 14664, 14670, ¶ 13, 14674-75, ¶ 22 (Int’l Bur., 2009) (accepting reliance on beneficial owner addresses as a proxy for citizenship where the publicly traded U.S. parent of the licensee undertook numerous steps and appeared to have exhausted other readily available means to ascertain the citizenship of its beneficial owners). See also *Applications of Cellco Partnership d/b/a Verizon Wireless and AT&T, Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations and Request for Declaratory Ruling on Foreign Ownership*, WT Docket No. 09-121, Memorandum Opinion and Order and Declaratory Ruling, 25 FCC Rcd 10985, 11023, ¶ 97 (WTB & Int’l Bur., 2010) (accepting reliance on showing Verizon Wireless had made to Commission in Verizon Wireless-RCC proceeding to demonstrate compliance with its ruling for purposes of acquiring licenses of Zodiac and Lafayette).

<sup>107</sup> See Reply in WT Docket No. 08-95 at 4-5; Petition for Reconsideration in WT Docket No. 08-95 at 11 n.23.

expects a public company with reason to know the citizenship or principal places of business of particular beneficial owners to include that information in the company's citizenship calculations.<sup>108</sup>

29. In summary, we find on reconsideration that we clearly spelled out the facts and circumstances underlying our decision in the *Verizon Wireless-Alltel Order*, properly distinguished our prior precedent, and made a reasoned public interest determination under section 310(b)(4) on the basis of our experience in applying the open entry standard of the *Foreign Participation Order* for investment from WTO Member countries in the U.S. parents of common carrier radio station licensees.

## V. CONCLUSION

30. We dismiss on procedural grounds Chatham's petition for reconsideration of the order granting the applications in WT Docket No. 07-208, the Verizon Wireless-RCC proceeding. We deny the relief sought by Chatham in WT Docket No. 08-95, the Verizon Wireless-Alltel proceeding, based on its argument that we erred in granting Verizon Wireless an extension of our section 310(b)(4) foreign ownership ruling to encompass Verizon Wireless' acquisition of control of the Alltel licenses.<sup>109</sup> Finally, we affirm that the foreign ownership information Verizon Wireless provided in the Verizon Wireless-Alltel proceeding was sufficient to demonstrate that Verizon Wireless had complied with its foreign ownership ruling under section 310(b)(4).

## VI. ORDERING CLAUSES

31. IT IS ORDERED that the petition for reconsideration filed by Chatham in WT Docket No. 07-208 is hereby DISMISSED for the reasons stated in this Order on Reconsideration.

32. IT IS FURTHER ORDERED that certain relief sought by Chatham in its petition for reconsideration in WT Docket No. 08-95 – to require Verizon Wireless to file a citizenship survey or alternatively to adopt a general rule permitting all applicants and licensees, for all services, to use addresses of record as the sole test for determining the citizenship of their potential investors under section 310(b)(4) – is hereby DENIED for the reasons stated in this Order on Reconsideration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>108</sup> *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17544-45, ¶ 229 n.795.

<sup>109</sup> We do not address Chatham's second argument in WT Docket No. 08-95 that we should have granted Chatham's proposal to require a divestiture condition. Nor do we address the petitions for reconsideration filed by entities other than Chatham in WT Docket No. 08-95. We will address Chatham's argument and the other petitions for reconsideration in a separate order.