

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

In the Matter of )
)
Applications of Atlantic Tele-Network, Inc. and ) WT Docket No. 09-119
Cellco Partnership d/b/a Verizon Wireless )
)
For Consent To Assign or Transfer Control of )
Licenses and Authorizations )
)
)

MEMORANDUM OPINION AND ORDER

Adopted: October 13, 2015

Released: October 16, 2015

By the Commission:

1. In this Memorandum Opinion and Order, we address applications for review1 filed in 2010 by the National Association of Black Owned Broadcasters, Inc. ("NABOB"), and Telephone USA Investments, Inc. ("Telephone USA") (jointly "Petitioners"), seeking review of the Wireless Telecommunications and International Bureaus' (Bureaus) conclusion that Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") properly divested certain licenses and associated business units to Atlantic Tele-Network, Inc. ("ATN") in the Bureaus' ATN Approval Order.2 We find that the Petitioners identify no material error or omission in the ATN Approval Order and present no additional new facts or legal arguments warranting reversal of the Bureaus' decision. In so far as Petitioners raise new arguments on review that were not properly presented first to the Bureaus, we dismiss these arguments for failing to satisfy the requirements in our rules for applications for review.3 As an independent ground for our decision, we also deny the arguments in the Petitioners' applications for review.

2. Background and Procedural History. On June 13, 2008, Verizon Wireless and Atlantis Holdings LLC ("Atlantis") filed applications seeking consent to the transfer of control of licenses and authorizations held by subsidiaries of ALLTEL Corporation from Atlantis to Verizon Wireless.4 On November 4, 2008, the Commission approved the transaction in the Verizon Wireless-ALLTEL Order.5

1 Application for Review of the National Association of Black Owned Broadcasters, Inc. NABOB, WT Docket No. 09-119, (filed May 20, 2010) ("NABOB AFR"); Application for Review of Telephone USA Investments, Inc., WT Docket No. 09-119, (filed May 20, 2010) ("Telephone USA AFR").

2 Applications of Atlantic Tele-Network Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent To Assign or Transfer Control of Licenses and Authorizations, Memorandum Opinion and Order, 25 FCC Rcd 3763 (WTB, IB 2010) ("ATN Approval Order").

3 See 47 C.F.R. § 1.115.

4 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").

5 Id.

The Commission conditioned the transaction upon Verizon Wireless's divestiture of operating units in 105 markets ("Divestiture Markets").<sup>6</sup> Rejecting requests by some petitioners, the Commission declined to impose specific conditions regarding the logistics of divesting the assets of the 105 Divestiture Markets but directed that the entire operating unit of either Verizon Wireless or ALLTEL had to be divested in those markets.<sup>7</sup> The 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>8</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>9</sup>

3. Subsequently, Verizon Wireless conducted a bidding process to identify potential buyers of the Divestiture Assets.<sup>10</sup> That process resulted in its proposing to sell to ATN licenses and business units in 26 of the 105 Divestiture Markets, having agreed earlier to sell the other 79 to AT&T.<sup>11</sup> Petitioners, and others, filed separate petitions to deny the proposed assignments to both AT&T and ATN, contending that the bidding processes did not comply with what they characterized as mandates set forth in the *Verizon Wireless-ALLTEL Order*.<sup>12</sup> Petitioners argued 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 Petitioners asserted effectively precluded small entities.<sup>13</sup> Petitioners claimed that the bidding process was not fair or open, but was "a sham" with predetermined winners.<sup>14</sup> Moreover, Petitioners argued that the divestiture to ATN was not in keeping with the Commission's statutory duty to promote diversity of ownership in the telecommunications industry.<sup>15</sup> Petitioners further asserted that the sale to ATN was at lower than market value for the assets and was the result of an improper conflict of interest.<sup>16</sup> Telephone USA also claimed that ATN had not demonstrated the "necessary managerial, operational, technical and financial capability" needed to operate in the United States.<sup>17</sup> Verizon Wireless and ATN filed a joint

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<sup>6</sup> *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17516-17 ¶ 159.

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

<sup>8</sup> *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17518 ¶ 162.

<sup>9</sup> *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17518 ¶ 162.

<sup>10</sup> *ATN Approval Order*, 25 FCC Rcd at 3784, ¶ 44.

<sup>11</sup> In July of 2009, NABOB filed a Petition for Reconsideration of the order approving the transfer of 79 licenses to AT&T. Petition To Deny of the National Association of Black Owned Broadcasters WT Docket No. 09-104 (filed July 20, 2009). In February 2015, the Wireless Telecommunications Bureau dismissed NABOB's petition. See Applications of AT&T Inc. and Celco 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 09-104, *Order on Reconsideration*, 30 FCC Rcd. 992 (WTB 2015).

<sup>12</sup> Petition To Deny of the National Association of Black Owned Broadcasters WT Docket No. 09-119, at 7 (filed Aug. 10, 2009) (NABOB Petition).

<sup>13</sup> Petition to Deny of Telephone USA Investments, Inc., WT Docket No. 09-119, at 5 (filed Aug. 10, 2009) (Telephone USA Petition)

<sup>14</sup> NABOB Petition at p. 7.

<sup>15</sup> NABOB Petition at p. 3; Telephone USA Petition at p. 9.

<sup>16</sup> NABOB Petition at p. 9.

<sup>17</sup> Telephone USA Petition at 6. See also *ATN Approval Order* at ¶ 30.

opposition to the petitions denying the allegations of impropriety in the bidding process and disagreeing with claims that the *Verizon Wireless-ALLTEL Order* mandated that the assets be divested to minority owned bidders.<sup>18</sup>

4. The Wireless Telecommunications Bureau (WTB) thereafter sought and obtained additional information from the parties in order to evaluate the foregoing claims. This included documents and additional information from Verizon Wireless and ATN, including information regarding ATN's plans concerning the CDMA network in the Divestiture Markets, ATN's transition plans and capabilities, and ATN's service, rate plans and handsets. WTB also obtained from Verizon Wireless and Morgan Stanley & Co. Inc. ("Morgan Stanley") additional information regarding the bidding process for the Divestiture Markets. WTB later also requested and obtained documents and additional information from Telephone USA concerning its participation in the bidding process, including copies of its bidding-related correspondence with Verizon Wireless, final bid documents, and other documents evidencing its funding of the purchase price.<sup>19</sup>

5. On April 20, 2010, after reviewing the record, including the extensive documentation produced in response to WTB's information requests, the Bureaus issued the *ATN Approval Order* consenting to the transfer of these 26 licenses from Verizon to ATN.<sup>20</sup> The Bureaus disagreed with the Petitioners' contentions, concluding that Verizon Wireless had conducted its bidding process in accordance with the guidance set forth in the *Verizon Wireless-ALLTEL Order*.<sup>21</sup> Specifically, the Bureaus found 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>22</sup> The Bureaus, noting the Commission's 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 divestitures.<sup>23</sup>

6. The Bureaus also addressed the Petitioners' remaining allegations. The first of these concerned acceptance of a lower bid price from ATN. The Bureaus contrasted ATN's "firm funding commitment from existing cash and an existing credit facility," with Telephone USA's failure to provide "evidence of committed funding, of a credible path to obtain funding, or of cash on hand sufficient to support the purchase price, despite multiple requests by Verizon Wireless and Morgan Stanley for such documentation."<sup>24</sup> The Bureaus concluded that, in these circumstances, Verizon Wireless had been reasonable in requiring a firm financing demonstration in order to meet the timing and buyer acceptability requirements required by the Department of Justice pursuant to the Final Judgment governing the Divestiture Markets.<sup>25</sup> With respect to the possible conflict of interest alleged to arise from an ownership interest in ATN held by Morgan Stanley which was acting as Verizon's advisor in the bidding process, the Bureaus concluded that this interest did not taint the bidding process, in light of Morgan Stanley's firewall protections and the evidence that no member of the Morgan Stanley Verizon Wireless team had any knowledge of such ownership interest.<sup>26</sup> Finally, the Bureaus found no evidence in the record that

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<sup>18</sup> Joint Opposition of Atlantic Tele-Networks, Inc. and Verizon Wireless to Petitions to Deny. WT Docket No. 09-119, (filed August 20, 2009).

<sup>19</sup> See *ATN Approval Order* 25 FCC Rcd at 3771, ¶¶ 16-17.

<sup>20</sup> *ATN Approval Order* 25 FCC Rcd 3763

<sup>21</sup> *ATN Approval Order* 25 FCC Rcd at 3787, ¶ 49.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 3784, ¶ 44.

<sup>24</sup> *Id.* at 3789, 3792, ¶¶ 53, 60.

<sup>25</sup> *Id.* at 3772-3773, 3789 ¶¶ 18-19, 54.

<sup>26</sup> *Id.* at ¶ 61.

ATN lacked the ability to compete effectively in the U.S. mobile telephony/broadband market. They pointed to its experience providing domestic wireless roaming services and retail wireline operations, its hiring of experienced senior management with knowledge of the Divestiture Markets, the knowledge of U.S. retail operations reflected in ATN's financial model submitted to the Commission, and other factors.<sup>27</sup>

7. *Applications for Review.* In May 2010, following the release of the *ATN Approval Order*, Petitioners filed applications for review asking the Commission to reverse the Bureaus' determinations. NABOB argues that the Bureaus failed to uphold the Commission's statutory authority to ensure that the transfer to ATN was in the public interest. NABOB contends, by incorporating and reiterating arguments it made in its earlier opposition to the assignment to AT&T, specifically, 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," and that similar circumstances applied to the ATN divestiture.<sup>28</sup> NABOB claims that the Bureaus' approval of the divestiture "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, as amended] to promote diversity of ownership of telecommunications facilities, promote ownership by minorities and to only grant an application if it serves the public interest."<sup>29</sup> NABOB states that, "Collectively, Sections 257, 309(i)(3) and 309 (j)(3)(b) demonstrate an extensive Congressional intent requiring the Commission to promote diverse ownership of telecommunications facilities by small businesses and businesses owned by minorities. The Commission may not ignore such statutory obligations."<sup>30</sup> In light of this alleged conflict, NABOB takes the position that the license transfer applications must be designated for a hearing before an Administrative Law Judge (ALJ) under Section 309(e).<sup>31</sup>

8. NABOB further argues that Bureaus misinterpreted the Commission's statements in the *Verizon Wireless-ALLTEL Order* about possible consideration and implementation of "mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups."<sup>32</sup> According to NABOB, the Commission meant that specific mechanisms had to be implemented by Verizon Wireless, and as such the Bureaus erred by interpreting these statements not as mandates, but rather as general encouragement.<sup>33</sup> Thus, NABOB argues that the interpretation of this specific language in *Verizon Wireless-ALLTEL Order* is a determination of law or policy not previously resolved and must be reviewed by the Commission.<sup>34</sup>

9. Additionally, NABOB claims that the Bureaus made errors as to material facts regarding the bidding processes set up by Verizon Wireless, and Morgan Stanley acting as its agent. NABOB repeats allegations from its earlier Petition to Deny that the process was designed to give "the erroneous impression that [Verizon Wireless] had heeded the Commission's instruction" but that "minorities who went through the process eventually realized that it was strictly 'business as usual' in the [Verizon Wireless] bidding process, and minority bidders were never given serious consideration as potential

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<sup>27</sup> *ATN Approval Order* 25 FCC Rcd at 3780-3781, ¶¶ 34-35.

<sup>28</sup> NABOB AFR at p. 11.

<sup>29</sup> NABOB AFR at p. 19 (citing 47 U.S.C. §§ 257, 309(i)(3), 309(j)(3)(B), and 310(d)).

<sup>30</sup> *Id.* at 10.

<sup>31</sup> NABOB AFR at p. 8 (citing 47 U.S.C. § 309(e)).

<sup>32</sup> *Id.* at 12-13.

<sup>33</sup> *Id.* at 12-13.

<sup>34</sup> *Id.* at 14.

purchasers.”<sup>35</sup> NABOB claims specifically that the price per subscriber that ATN paid to Verizon Wireless was so low as to raise “the clear implication that ATN received special consideration in the bidding process.”<sup>36</sup> NABOB alleges that “such a bid reeks of inside information” and that the Bureau dismissed this allegation by “simply concluding that ‘the ground rules established for the bidding process were reasonable.’”<sup>37</sup> NABOB argues that such factual questions regarding the legitimacy of the process can only be answered in a hearing before an ALJ.<sup>38</sup> Lastly, NABOB raises an allegation of a conflict of interest brought on by Morgan Stanley’s holding of stock in ATN at the time of the transaction.

10. Telephone USA makes many of the same claims and allegations in its Application for Review. Telephone USA contends specifically that the *ATN Approval 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>39</sup> As it did in its earlier Petition to Deny, Telephone USA recounts its own experiences in seeking to acquire the divestiture assets. Telephone USA recounts its expenditure of time and money as good faith efforts that were met with a process it described as “opaque at best.”<sup>40</sup> Telephone USA claims that the sale of the first set of assets to AT&T contradicted assurances it had received from Verizon Wireless, but that Telephone USA still moved forward with its attempts to purchase the remaining assets at a price considerably higher than ATN’s eventual winning bid.<sup>41</sup>

11. Telephone USA, similarly to NABOB, states that the *ATN Approval Order* violates the Commission’s statutory mandate in Section 257 of the Communications Act of 1934, as amended, to eliminate “...market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services.”<sup>42</sup> Telephone USA claims that the Bureau wrongly “concluded that the ALLTEL Merger Order did not provide specific enough conditions on the divestiture process to find that Verizon failed to satisfy its requirements. But the lack of specific requirements did not diminish Verizon’s responsibility under that order ...”<sup>43</sup> Telephone USA further argues that the divestiture process and sale to ATN were not in the public interest. According to Telephone USA, “Every step Verizon [Wireless] took diminished the chances that any non-traditional bidder would be successful.”<sup>44</sup> Telephone USA alleges that it was “permitted to participate for show”<sup>45</sup> and that due to the expense of that participation, Telephone USA claims that the “perverse result of Verizon’s process is that traditionally disadvantaged companies were made worse off by the divestiture process . . . .”<sup>46</sup> Telephone USA states that the *ATN Approval Order*’s conclusion, that “Verizon conducted a fair and inclusive bidding process,” is “based at least in part on findings of fact that are directly contradicted by the evidence.”<sup>47</sup> Specifically, Telephone USA claims that the price paid by ATN for the divestiture assets was so far below market value, and the price that Telephone USA was willing to pay, that it requires

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<sup>35</sup> *Id.* at p. 15.

<sup>36</sup> NABOB AFR at p. 18.

<sup>37</sup> *Id.* (quoting *ATN Approval Order* 25 FCC Rcd at 3792, ¶ 60).

<sup>38</sup> *Id.*

<sup>39</sup> Telephone USA AFR at p. 2.

<sup>40</sup> Telephone USA AFR at p. 4.

<sup>41</sup> *Id.* at pp. 7-8.

<sup>42</sup> *Id.* at p.10 (citing 47 U.S.C. § 257).

<sup>43</sup> *Id.* at pp. 11-12.

<sup>44</sup> *Id.* at p. 14.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at p. 15.

<sup>47</sup> *Id.*

further scrutiny by the Commission.<sup>48</sup> Lastly, Telephone USA claims that the sale is not in the public interest because ATN is not a well-qualified service provider, claiming that ATN has “no experience in the domestic retail market” and its businesses in overseas markets “have been remarkably unsuccessful.”<sup>49</sup> In sum, Telephone USA argues that because of these alleged shortcomings, given the interest of promoting participation by qualified minority-owned bidders, the *ATN Approval Order* is contrary to the public interest.<sup>50</sup>

12. Verizon Wireless and ATN both filed oppositions to NABOB’s and Telephone USA’s Applications for Review.<sup>51</sup> As to the bidding process, Verizon Wireless asserts that the Bureaus reviewed an “extensive record and considering each of Petitioners’ arguments, the Bureaus properly found that the transaction would serve the public interest, [and] that Verizon Wireless fully complied with the requirements of the *Verizon Wireless-ALLTEL Order*.”<sup>52</sup> ATN asserts that Verizon Wireless was “under no obligation to follow any particular procedures” and “that the Commission explicitly declined to impose any such obligations”<sup>53</sup>

13. As to Petitioners’ statutory assertions, according to ATN, Section 257 of the Act does not obligate the Commission to direct that licenses be granted only to a certain class of licensee.<sup>54</sup> Verizon and ATN argue that Sections 309(i)(3) and 309(j)(3)(B) are inapplicable to secondary market transactions such as the one in question. They also argue that Section 310(d) precludes consideration of the qualifications of other potential purchasers.<sup>55</sup> ATN argues that Petitioners fail to demonstrate any material error or present any new evidence that would warrant reconsideration of the Bureaus’ decision,<sup>56</sup> and that the Petitioners “resort to intemperate speculation” and “unsubstantiated ‘word on the street’ allegations” regarding potential actions Verizon Wireless would, but did not, take to facilitate participation by minority businesses as evidence that something was amiss in the bid process.<sup>57</sup> Verizon Wireless disputes the Petitioners’ claims that the application of the *Verizon Wireless-Alltel Order* is an unresolved matter of law or policy, claiming that the Commission was unambiguous in expressly declining to impose specific conditions. ATN notes that the Bureaus thoroughly reviewed its business and financial qualifications and that Section 310(d) precludes a comparative analysis with other potential bidders.<sup>58</sup> Verizon Wireless also claims that the Petitioners’ arguments do not meet the standards set forth in Section 1.115 of the Commission’s rules for applications for review.<sup>59</sup>

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<sup>48</sup> *Id* at p. 20.

<sup>49</sup> *Id* at p. 21.

<sup>50</sup> *Id* at p. 22.

<sup>51</sup> Opposition of Cellco Partnership d/b/a/ Verizon Wireless to Applications for Review, WT Docket No. 09-119 (filed June 4, 2010) (“Verizon Wireless Opposition”); Consolidated Opposition of Atlantic Tele-Network, Inc. to Applications for Review, WT Docket No. 09-119 (filed June 4, 2010) (ATN Opposition).

<sup>52</sup> Verizon Wireless Opposition at p. 3.

<sup>53</sup> ATN Opposition at p. 7.

<sup>54</sup> ATN Opposition at p. 11.

<sup>55</sup> Verizon Wireless Opposition at p.14; ATN Opposition at p. 6.

<sup>56</sup> ATN Opposition at p. 6.

<sup>57</sup> ATN Opposition at p. 10 (citing NABOB AFR at pp.15-16). NABOB claims that “there was ‘word on the street’ that VZW was going to ask the Minority Media Telecommunications Council to conduct a special session with prospective minority bidders to acquaint them with what the process would entail and what steps VZW would undertake to assist minority bidders . . . .” NABOB AFR at 15.

<sup>58</sup> ATN Opposition at p. 13.

<sup>59</sup> Verizon Wireless Opposition at pp. 4-13.

14. *Discussion.* Pursuant to section 1.115 of the Commission's rules, parties may seek review by the Commission of any action taken by Bureaus pursuant to delegated authority.<sup>60</sup> Applications for review must specify at least one factor, enumerated in section 1.115(b)(2), which warrants Commission consideration, namely that the action (1) conflicts with statute, regulation, precedent, or established Commission policy; (2) involves a question of law not previously resolved by the Commission; (3) involves an application of a precedent or policy which should be overturned; (4) involves an erroneous finding as to an important or material question of fact; or (5) involves a prejudicial procedural error.<sup>61</sup>

15. Petitioners argue that the grant of consent for the transfer to ATN conflicted with statutory obligations and cite a number of provisions in the Act to support their claims. However, we find that the transfer is not inconsistent with any of the cited provisions. Section 257 addresses the identification of rules and statutes that constitute barriers to entry, not Section 310(d) assignments or transfers of control of individual licenses. Section 257 directed the Commission to complete a proceeding within 15 months after February 8, 1996, "for the purposes of identifying and eliminating, by regulations . . . , market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services."<sup>62</sup> It then requires the Commission, every three years thereafter, to review and report to Congress on "regulations prescribed to eliminate barriers within its jurisdiction that are identified [thereunder]," as well as statutory barriers.<sup>63</sup> Petitioners read Section 257 as meaning that only transfers to certain classes of applicant can be approved by the Commission and, as such, mandating particular results when the Commission considers specific license transfer applications. We conclude that the section, which refers to implementation of general "regulations," cannot support such an interpretation, noting that Petitioners cite no case law, Commission ruling, or regulation.

16. Rather, review of the transactions at issue are governed by Section 309(d), which requires petitions to deny to contain specific allegations of fact, supported by affidavit on personal knowledge, sufficient to show that grant of the application would be *prima facie* inconsistent with the public interest.<sup>64</sup> The claims raised by Petitioners fail to address the Bureaus' findings, and rely on the same assertions about the "word on the street,"<sup>65</sup> which do not satisfy this standard.

17. The remaining sections of the Act cited are equally inapplicable. Section 309(i)(3) and Section 309(j)(3)(B) both apply to applications for initial licenses or permits, the former via lottery and the latter via competitive bidding, as opposed to secondary market transactions and divestitures. Section 310(d), which directs the Commission to determine that the transfer of a license is in the public interest, actually bars the Commission from considering whether the public interest might be served by the transfer to any other person, such as Telephone USA. Given that the Bureaus conducted a thorough review of the public interest implications of the transfer to ATN, and for the reasons stated above, we find that the Bureaus' Order did not contradict the Act.<sup>66</sup>

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<sup>60</sup> 47 C.F.R. § 1.115(d).

<sup>61</sup> 47 C.F.R. § 1.115(b)(2)(i)-(v).

<sup>62</sup> 47 U.S.C. § 257(a).

<sup>63</sup> 47 U.S.C. § 257(c).

<sup>64</sup> 47 U.S.C. § 309(d)(1).

<sup>65</sup> *See supra* n. 57.

<sup>66</sup> Furthermore, as petitioners did not specifically cite any of these provisions in their Petitions to Deny they cannot rely on such arguments as grounds for review. Section 1.115(c) states that "No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass." 47 C.F.R. § 1.115(c).

18. Petitioners argue that the interpretation of the Commission's statements encouraging 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>67</sup> was a question of first impression that the Bureaus could not determine without prior guidance from the Commission. The Petitioners, however, advance a strained interpretation of the relevant language, which is clearly permissive and not mandatory. The Commission, in the *Verizon Wireless-ALLTEL Order*, was presented with a number of specific requests to impose conditions. For example, commenters requested that the Commission prohibit divestiture to a nationwide provider, that it require divestiture only to rural and mid-tier carriers, that it require divestitures be made in small geographic areas, or that any divestitures in rural areas include population centers to ensure a viable service area.<sup>68</sup> One commenter specifically urged the Commission to require a "right of first negotiation for the acquisition of [divested] businesses or assets to companies owned or controlled by members of minority or socially disadvantaged groups."<sup>69</sup> In response, the Commission expressly "decline[d] to impose specific conditions regarding the potential acquirers of and methods for selling the Divestiture Assets," but, as described above, encouraged Verizon to implement mechanisms to assist various kinds of entities in acquiring the Divestiture Assets.<sup>70</sup> The Bureaus carefully considered the question of whether Verizon Wireless's process of soliciting bids and accepting ATN's offer was consistent with the foregoing statement of the Commission, and their analysis was based on the results of substantial further information requests to the parties. We agree with the Bureaus that Verizon Wireless conducted the bidding process in accordance with the guidance set forth in the *Verizon Wireless-ALLTEL Order*.<sup>71</sup>

19. Petitioners also claim that there were erroneous findings of material fact by the Bureaus which now warrant Commission review. These same factual allegations, however, were also considered and properly addressed by the Bureaus in the *ATN Approval Order*. The Bureaus 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>72</sup> The Bureaus thoroughly reviewed and addressed Petitioners' allegations regarding the winning bid amount and potential conflicts of interest.<sup>73</sup> We have reviewed NABOB's and Telephone USA's repetition of arguments that were considered and addressed previously, and the Bureaus' determinations with respect to such arguments, we have found those determinations to be correct, and we affirm them for the reasons stated.

20. Petitioners present no novel question of law that has not previously been considered by the Commission. Petitioners present no additional facts and raise no material error or omission in the original order that warrants review. As noted above, and assuming arguendo that the Petitioners do raise any new statutory arguments, they fail to identify any reason why these statutory provisions would bar Verizon Wireless's conduct of the bidding process in accordance with the Commission's prior guidance, or why review on these grounds could be properly granted under the Commission's rules.<sup>74</sup> For these reasons, we dismiss or deny the arguments in Petitioners' Applications for Review.

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<sup>67</sup> *Verizon Wireless-ALLTEL Order* at ¶ 160.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Verizon Wireless-ALLTEL Order* at ¶ 162.

<sup>71</sup> Accordingly, the claim that interpreting this guidance "involves a question of law and policy which the Commission has not previously resolved," NABOB AFR at 3, is moot.

<sup>72</sup> *ATN Approval Order* ¶ 48.

<sup>73</sup> *ATN Approval Order* ¶¶ 60-61.

<sup>74</sup> See 47 C.F.R. § 1.115(c).



21. Accordingly, having reviewed the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and 5(c)(4) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(4), and section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g), the Applications for Review filed by the National Association of Black Owned Broadcasters, Inc. and by Telephone USA Investments, Inc. are hereby DISMISSED OR DENIED for the reasons stated herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary