

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

In the Matter of)
)
E.N.M.R. TELEPHONE CO-OPERATIVE and)
its wholly-owned subsidiary, PLATEAU)
TELE-COMMUNICATIONS, INC.)
)
and) ULS File Nos. 0005034870,
) 0005034877 and 0005063051;
) ITC-ASG-20120420-00105
CELLCO PARTNERSHIP d/b/a Verizon)
Wireless)

Applications for Consent to the Assignment
of Cellular, Personal Communications Service,
AWS-1 and related Point-to-Point Microwave
Licenses and International Section 214
Authority

To: The Commission

PETITION TO DENY

Mescalero Apache Telecommunications, Inc. ("MATI"), an enterprise of the Mescalero Apache tribe of Native Americans, through counsel and pursuant to Section 309(d) of the Communications Act, hereby petitions the Commission to deny the above-captioned applications for consent to the assignment of Cellular, PCS, AWS-1 and related point-to-point microwave licenses (and related Section 214 authority) to Cellco Partnership d/b/a Verizon Wireless ("Verizon") from E.N.M.R..Telephone Co-operative and Plateau Communications Incorporated ("Plateau").

I. FACTS DEMONSTRATING MATI'S INTEREST IN THESE PROCEEDINGS

MATI is a telecommunications provider operating on the Mescalero Apache reservation, located in parts of Otero and Lincoln counties, New Mexico. MATI provides local and long-distance land-line service, and high-speed Internet service, via copper wire and fiber, on the reservation. In addition, through a lease arrangement with Commnet Wireless, MATI shares revenue from roaming in the area of the reservation by customers of Verizon, AT&T, T-Mobile and Plateau. Of at least equal importance, through the Connect America program and the Mobility Fund Phase I auction, MATI aspires to provide wireless broadband service to the reservation and adjoining areas.

The goals of the National Broadband Plan, including affordable universal access to robust broadband service and a wireless public safety network, are high priorities for the Mescalero Apache tribe and its members living and doing business on the reservation. The Mescalero reservation covers a large territory – approximately 780 square miles – that is very sparsely populated – roughly six people per square mile. Obviously, with such distances to cover, residents of the reservation stand to benefit significantly when wireless communications are available. However, cellular telephone service in many areas of the reservation is impaired by both terrain (characterized by mountains, arroyos and forests) and a lack of robust cellular infrastructure. Broadband wireless service, for all intents and purposes, is non-existent.

Existing wireless service from Verizon and other carriers covers no more than fifteen to twenty percent of the roads on the reservation and, where service is “available,” it is extremely unreliable, i.e., dead spots, cut-offs, and slow or no Internet service are prevalent. In fact, 3G service is available only in a handful of locations, including in the

vicinity of the tribal headquarters and the Inn of the Mountain Gods, an important tribal enterprise (tourism is one of the tribe's principal sources of revenue). 3G service is so sparse, guests at the Inn of the Mountain Gods who want to use their own personal communications devices must retreat to the parking lots because direct reception is not available in the resort buildings. Accordingly, residents of the reservation are seriously inconvenienced in their daily lives and handicapped in the conduct of their businesses, and compromised in their safety and security, by the lack of reliable wireless broadband services enjoyed by residents of more affluent and more urbanized areas.

Because of its presence on the reservation, MATI is in a position, through the Mobility Fund Phase I auction and the Connect America program, to build out a wireless service that far surpasses anything provided by Verizon, Plateau or any other carrier currently operating in the area. Apart from MATI's interest as a prospective wireless provider, MATI and the Mescalero Apache tribe have a keen interest in preventing an accumulation of spectrum by a single party that would reduce existing competition and pose additional barriers to entry by MATI or any other carrier that could potentially improve upon the second-class service currently offered to residents of the reservation.

II. VERIZON'S INCREASING ACCUMULATION OF SPECTRUM AND THE ADVERSE EFFECTS ON COMPETITION

As noted in the FCC's *Public Notice* concerning these applications, DA 12-734, released May 9, 2012, in one of the affected counties (Lincoln), Verizon would hold, "post-transaction," 145 MHz of spectrum, which exceeds the FCC's "spectrum screen," for this area, which requires additional scrutiny of the applications. (This calculation of the amount

of Verizon's projected spectrum holdings takes into account acquisitions proposed in other applications, which have been opposed in WT Docket No. 12-4, for reasons that apply equally here.) Review of the FCC's "Spectrum Dashboard" shows that, together, Verizon and Plateau hold licenses for 134 MHz in Otero County, and more in Lincoln County. Regardless of what arbitrary "spectrum screen" is applied, (A) not all spectrum is created equal (in both counties, Verizon would control 59 MHz of spectrum in the bands below 1 Ghz that, because of their signal propagation properties, can be most efficiently deployed; (B) in areas such as the reservation that are characterized by high costs because of small, widely-dispersed populations and terrain anomalies, the accumulation of any large block of spectrum by a single carrier is a significant barrier to entry by potential new competitors.

Verizon is by far the largest mobile service provider in the United States. If this transaction is approved, smaller carriers and potential new entrants such as MATI could be precluded from improving existing service or constructing new wireless networks and from continuing to provide – or providing in the future – effective competition to a dominant Verizon.

The effects of this and other proposed Verizon acquisitions on competition are very much a part of the FCC's "public interest" consideration. Consolidation of the facilities of carriers who are already failing to provide high-quality service does not advance the public interest of the people of the Mescalero Apache reservation. Their interest – and the interests of other users of mobile services in the affected areas – will be best served by preserving the opportunity of other operating carriers, and new entrants, to compete with Verizon.

The only statement in Verizon's applications that addresses the subject of competition is the following: "As a result of this transaction, the number of operating wireless providers will not be reduced, *other than in the portion of Lincoln County where Verizon Wireless currently operates and Otero County where Plateau offers only roaming services.*" Exhibit 1, "Description of Transaction and Public Interest Statement," p. 3 (emphasis added). Those of course, are the counties in which MATI and residents of the reservation have a direct interest and where existing service is substantially substandard.


Verizon has already attempted to manipulate and suppress competition in the area of the Mescalero Apache reservation, by filing – when the pleading cycle provided no opportunity to respond – unsupported (and unsupportable) Reply Comments in response to the FCC's *Public Notice*, DA -12-187, in AU Docket No. 12-25, requesting comment on an updated list of census blocks potentially available in the Mobility Fund Phase I auction. In those "Reply Comments," Verizon claimed for the first time, without substantiation, that some 23,000 census blocks, including *every* census tract on the Mescalero Apache reservation in Otero County, received at least 3G service and were, therefore, ineligible for the Mobility Fund Phase I auction.

Officials of MATI confirmed, independently, that *none* of the reservation census tracts listed in the Verizon Reply Comments receives 3G or better service. Obviously the Mobility Fund Phase I auction represents an opportunity for MATI and others to provide competition to Verizon and equally obviously Verizon sought, with anti-competitive motives, to foreclose that possibility. Recognizing the lack of any supporting evidence for Verizon's allegations regarding availability of 3G service, the FCC – correctly – refused to remove

DECLARATION UNDER PENALTY OF PERJURY

Godfrey Enjady, under penalty of perjury under the laws of the United States, hereby declares:

1. I am General Manager of Mescalero Apache Telecom, Inc. ("MATI")
2. I have read and am familiar with MATI's Petition to Deny the applications for FCC consent to the assignment of certain assets of Plateau Communications Incorporated to Verizon Wireless.
3. The facts stated therein are true of my personal knowledge, except for those facts which are supported by other sources, of which official notice may be taken, or where stated to be on information and belief, and as to those facts I believe them to be true.



Godfrey Enjady

May 23, 2012

CERTIFICATE OF SERVICE

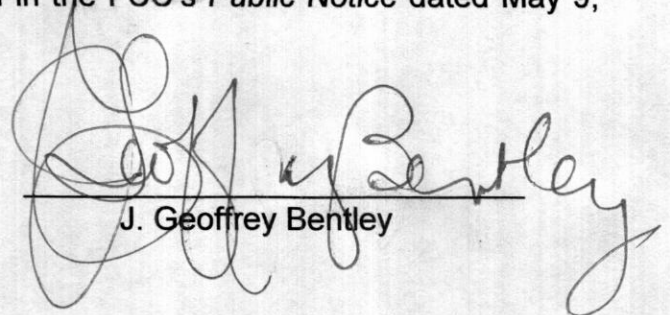
I hereby certify that, this 23rd day of May 2012, the attached Petition to Deny was served on, by depositing a copy in the United States mail, First Class postage prepaid and addressed to:

Herman & Whiteaker, LLC
Gregory W Whiteaker
PO Box 341684
Bethesda, MD 20827
Counsel for the Assignor

and

Verizon
Attention: Sarah Trosch
1300 I Street, NW - Suite 400 West
Washington, DC 20005

and by e-mail on the persons/entities named in the FCC's *Public Notice* dated May 9, 2012, concerning these applications.



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any of those census blocks form the eligibility list. *Notice and Filing Requirements and Other Procedures for Auction 901*, DA 12-641, released May 2, 2012, ¶ 21.

Against the obvious impairment of competition, Verizon offers no compelling reason how the proposed assignments would serve the public interest. Verizon offers only that customers acquired from Plateau will be transitioned to a new Verizon 3G network within 12-15 months and will at some point in the future have "access" to a 4G LTE service offering. Exhibit 1, "Description of Transaction and Public Interest Statement," p. 1. Proferring 3G service to Plateau's transitioning existing customers at some point in the indeterminate future does not address or advance the interests of those, like the residents of Mescalero Apache reservation, currently unable to receive reliable wireless service, of any type, let alone broadband service.

For the foregoing reasons, the applications should be denied.

Respectfully submitted,

MESCALERO APACHE
TELECOMMUNICATIONS, INC.

By


J. Geoffrey Bentley

Its Attorney

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May 23, 2012