

**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)
TELECOMMUNICATIONS, INCORPORATED))
)
and) ULS File Nos. 0005034870,
) 0005034877 and 0005063051;
) ITC-ASG-20120420-00105
CELLCO PARTNERSHIP d/b/a Verizon)
Wireless)
)

For Consent to the Assignment of Cellular,
Personal Communications Service, AWS-1
and related Point-to-Point Microwave
Licenses

To: The Commission

MESCALERO APACHE TELECOM, INC.'S REPLY

Mescalero Apache Telecom, Inc. ("MATI"), through counsel, hereby replies to the Joint Opposition to MATI's Petition to Deny the above-captioned applications for approval of the assignment and sale of assets from Plateau Telecommunications, Incorporated ("Plateau") to Verizon Wireless ("Verizon"). Plateau and Verizon's dismissive Joint Opposition, completely ignoring the substandard wireless service currently available on the Mescalero Apache reservation (*Petition to Deny*, pp. 2-3), typifies the indifference of regional and national carriers to the needs of Native American communities. It also illustrates why the FCC must chart a new path for tribally-owned telecommunications

companies to respond to the needs of tribal members for 21st century telecommunications services, including wireless broadband services.

The Joint Opposition's invocation of "standing" to oppose MATI's petition shows either or both the hubris of national carriers or a woeful, willful ignorance of facts on the ground that has made them indifferent to the service needs of the residents of tribal communities. For several compelling reasons, MATI is a "party in interest" with standing to oppose the Plateau-to-Verizon applications.

First, MATI is a rural telecommunications carrier providing local exchange service and broadband internet services on the Mescalero Apache reservation, located in New Mexico's Lincoln and Otero counties, via copper wire and fiber-optic cable. MATI has been certified as an "Eligible Telecommunications Carrier" by the New Mexico Public Regulation Commission. The purposes for which MATI was organized by the Mescalero Apache Tribal Council were to (1) promote the health, safety and welfare of tribal members, (2) provide meaningful training and employment for tribal members, and (3) provide state-of-the-art telecommunications services to tribal members. MATI has invested more than \$11 million in constructing a state-of-the-art landline system that makes available basic local service to 97 percent of tribal residents and broadband-based Internet service to 92 percent of tribal residents.

As a local exchange carrier, MATI competes directly with various wireless carriers, including Plateau and Verizon. A number of MATI's land-line customers – many of whom lack sufficient discretionary income to subscribe to both landline and mobile services – have substituted mobile service for landline service, because of the convenience for off-

reservation communications. Accordingly, MATI will be in direct competition with Verizon for customers.

Equally to the point, predation of MATI's landline customers has already shifted maintenance and other operating costs to a smaller base of customers. The Verizon transaction poses the threat that MATI will be required to increase rates, provide higher subsidies to low-income residents, and potentially lose even more subscribers. Notwithstanding that some of MATI's landline customers may be lost, MATI will continue to be obligated to continue to provide service to residents of the reservation who cannot afford Verizon's services, who are not served by major roads, and/or who live in areas of the reservation that are remote from a small number of population centers. Further reductions in MATI's customer base could result in degradation of existing landline services for which many residents of the reservation have no alternative. In an area where the terrain is characterized by mountains and canyons, neither Verizon nor any other non-Native wireless carrier is likely to provide affordable, state-of-the art service to all or even a majority of the residents of the reservation.

Second, MATI has a direct, pecuniary interest in the Plateau-to-Verizon assignment, as Plateau is the lessee of space on three communications towers owned by MATI. On information and belief, the assignment of these leases to Verizon is part of the transaction for which FCC approval is being sought. Under the terms of these leases, their assignment to Verizon requires MATI's express, written consent, which, at MATI's sole discretion, may be withheld for any reason. In addition, Verizon has operated for two-and-a half years from a fourth tower, owned directly by the Mescalero Apache Tribe, for which Verizon has never signed a lease or paid rent. The assignment, therefore, presents MATI and the tribe with

a Hobson's choice of potentially disrupting the limited wireless service currently provided to residents of the reservation or being in a relationship with an entity (Verizon) that has demonstrated indifference to both the service needs of the reservation community and the sovereign status of the Mescalero Apache tribe.

The sovereign status of the Mescalero Apaches and other tribal governments is itself a third reason why MATI has standing to oppose these applications. The government of the United States, including the FCC, has repeatedly recognized that federal regulation must recognize and accommodate the role and rights of sovereign tribal governments. E.g., *Executive Order No. 13175*, 65 Fed. Reg. 67249, November 9, 2000 ("Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications"); *Presidential Memorandum*, "Tribal Consultation," 74 Fed. Reg. 57881, November 9, 2009 ("executive departments and agencies . . . are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes"); *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, FCC 00-207, released June 23, 2000 (the FCC "recognizes that the federal government has a longstanding policy of promoting tribal self-sufficiency and economic development").

If, as Verizon and Plateau suggest, the FCC were to apply an artificially restrictive definition of "standing" to deny the petition of a tribally-owned entity with exclusive responsibility for providing landline telephone service within the Mescalero Apache

reservation, all of the above-referenced statements, and others recognizing the sovereign status of the Indian tribes, would be no more than meaningless platitudes.

The substantive arguments made in the Joint Opposition are no more persuasive than the claim that MATI lacks standing. For example, the Joint Opposition asserts that there is “no harm to competition” (*Joint Opposition*, p. 6) because the “number of operating wireless providers will not be reduced . . . *except in the portion of Lincoln County where Verizon Wireless operates and in Otero County*” (*Joint Opposition*, p. 7; emphasis added) – which are precisely the counties in which the Mescalero Apache reservation is located and where the inadequate service of Verizon and other carriers is a pressing concern of the tribe. The fact that, allegedly, Plateau provides only “roaming” service in Otero County at the present time is of no consequence because Plateau does have extensive spectrum holdings in Otero County and its *potential*, with both spectrum and facilities, to offer retail service in the future is a constraint on potential anti-competitive behavior. Once Plateau exits the scene, Verizon will simply be the largest elephant in the parlor.

Similarly, Verizon’s statement that it will overlay the portion of its 3G network that covers (portions) of the reservation with 4G LTE in 2013 (*Joint Opposition*, p. 5) is a promise without any substance. The issue underlying the Petition to Deny is that neither Verizon nor any other carrier operating in the area of the reservation provides a state-of-the-art wireless service to the vast majority of the area and population of the reservation.¹

¹ Verizon’s suggestion that it might install repeaters at the Inn of the Mountain Gods shows only that it has no interest in providing more than battlefield triage for a small part of the problem. The resort was cited in the Petition to Deny (*Petition*, p. 3) only as an *example* of the problem of non-existent or unreliable service that prevails over *all* of the reservation. The Joint Opposition offers no serious proposal, such as – for example – divestiture of assets that would enable MATI to provide reliable, advanced wireless service

Verizon claims (*Joint Opposition*, p. 6) that it “covers more of the geography and population on the reservation than any other carrier” while completely ignoring that no more than 25 percent of the roads on the reservation, and no more than 50 percent of the population, are currently covered by 3G service. So, positing that a population that currently is inadequately served will continue to be inadequately served albeit with a faster speed of service does not make a compelling case that approval of this transaction is in the public interest, especially when potential injury to competition is considered.

That large portions of the Mescalero Apache Reservation – and other tribal lands – receive substandard wireless service does not come as news to the FCC. As recently as last week (June 7, 2012), Commissioner Mignon L. Clyburn testified before the Senate Committee on Indian Affairs:

While approximately six percent of all Americans are unserved by broadband, it is well known that Tribal Nations and Native Communities lag well behind the nation as a whole. These Americans are the “have nots” of the broadband world

* * * * *

For Tribal Nations, access to broadband is particularly critical. For Tribal Governments themselves, the benefits of broadband infrastructure, both fixed and mobile, will enable new opportunities for the provision of quality healthcare, education, public safety, and jobs. Broadband must be available, accessible and affordable to meet its great promise for Tribal Nations and Native Communities.

Approval of the Verizon applications will, at best, perpetuate – and at worst, aggravate – the status quo by reducing competition, or potential competition, in the area of the reservation. For most of the reservation, state-of-the-art wireless services will

to the areas and populations to which Verizon is indifferent.

remain unavailable, inaccessible and unaffordable. MATI, singly or in partnership with other entities, is a capable potential service provider, and intends to apply for or build out spectrum for wireless services that will meet the needs of the residents of the reservation. But FCC approval of the assignment of Plateau's licenses and assets to Verizon will mean only that Verizon will continue to be the dog in the manger, using spectrum inefficiently and presenting a substantial barrier to entry to MATI or any other entity that might genuinely seek to serve the Mescalero Apache nation.

For the foregoing reasons, the applications should be DENIED.

Respectfully submitted,

MESCALERO APACHE
TELECOMMUNICATIONS, INC.

By /s/ J. Geoffrey Bentley
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June 11, 2012

CERTIFICATE OF SERVICE

I hereby certify that, this 11th day of June 2012, the attached Reply of Mescalero Apache Telecom, Inc., was served on, by depositing a copy in the United States mail, First Class postage prepaid and addressed to:

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

/s/ J. Geoffrey Bentley
J. Geoffrey Bentley