



November 2008

ALLTEL/Verizon Merger

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As the Bush administration stumbles to the finish line, there has been a mad dash by Verizon and AT&T to acquire erstwhile competitors. The current administration's Antitrust Division has never seen a merger it didn't like, an attitude which has resulted in unprecedented consolidation in the wireless industry. The middle range of regional wireless carriers like Dobson, Centennial, RCC and others have all succumbed to the blandishments of the majors during this period of *laissez faire* (or should we say *laissez les bon temps rouler!*) consolidation. Everyone expects the new administration to take a much less forgiving view of industry concentration, which explains the rush to get antitrust sign-off on these deals before the candy store closes up shop on January 20 of next year.

The latest in this queue is the ALLTEL/Verizon deal, approved by the FCC earlier this month. The merger greatly expands Verizon's footprint in rural areas, something that concerns the many smaller carriers who relied on ALLTEL's GSM system in those areas for roaming access. There was little question that the FCC would bless the deal, but the conditions imposed and the screening process applied were of deep interest.

Initial screen. The news here is that the FCC has slightly adjusted the "screen" (*i.e.*, the quantum of spectrum held by a single entity) it uses to determine whether competition in a given market may be harmed by a proposed acquisition. The threshold amount of spectrum prospectively held by the acquiring company has risen recently from 75 MHz to 95 MHz and now to 145 MHz under certain conditions. What has been happening is that as more spectrum is made available by the FCC, it increases the total amount of spectrum available to competing carriers and thus permits any individual carrier to hold a bigger share. Now that AWS-1 is coming on line, BRS is being rolled out, and the 700 MHz band will be available next February, the FCC could legitimately expand the spectrum pie by that amount, allowing individual slices to be bigger. So the FCC in this case and in the future will use 145 MHz as its threshold in markets where both BRS and AWS-1 are available, 125 or 115 MHz where one of the other is available, and 95 MHz where neither is available. The FCC also clarified in a related Order (*see* article, page 4) that this screen will be applied to acquisitions made via auctions, though it is difficult to see how this could be applied post-auction to preclude acquisition of a given license.

Divestiture. Verizon voluntarily and involuntarily must divest itself of spectrum in 105 markets.

Roaming. Verizon agreed to maintain ALLTEL's GSM system "indefinitely" which gives small GSM carriers comfort for an indefinite amount of time that they will have a place for their customers to roam. It also agreed to honor ALLTEL's roaming agreements for the longer of four years or the current term. Since many carriers depend on ALLTEL for roaming in many rural markets, we can expect much nail-biting, filing of complaints, and thrashing about in four years when the roaming agreements (and probably the GSM system) bid adieu to the industry. The Commission did not require Verizon to make data roaming available since this subject is being considered in a larger rulemaking context.

Handset exclusivity. The Commission did not require Verizon to eschew exclusive handset deals with manufacturers, again noting that this subject is being considered in a broader rulemaking.

Open development and network access. Ditto. The FCC did not see a need here to impose net neutrality obligations on Verizon until the issue is decided generally, nor to require Verizon to open its network (more than it already has) to independent consumer devices.

Universal Service support. In one of the more significant if little discussed elements of the merger, Verizon voluntarily agreed to gradually give up its rights to high cost Universal Service support for wireless operation over a five-year period. ALLTEL was the single largest recipient of USF support, so this concession should make hundreds of millions of dollars of USF support available to other carriers under the cap which is presently in place. Perhaps Verizon figured that its USF support was going to drop anyway under the new USF distribution regime, but still this could afford some competitive ETCs short term benefits by freeing up money under the cap.

E-911. Verizon committed to meet the higher location accuracy thresholds sought by the public safety community on a county-by-county basis. The FCC is likely to impose this requirement on all carriers shortly.

Verizon may now kiss the bride.