

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of Further Streamlining)	CC Docket No. 01-150
Measures for Domestic Section 214)	
Authorizations)	

COMMENTS OF VERIZON¹

I. Introduction and Summary

The Commission is appropriately proposing to streamline the process for review of section 214 applications involving the transfer of lines in connection with changes in corporate control. The Commission’s proper statutory role here, however, is limited to reviewing whether requests to transfer lines meet the requirements of section 214.² It is not to conduct an overall review of the transfer of control itself or whether the transfer will affect competition in all segments of the telecommunications marketplace.

As a result of expanding the scope of its review, Commission examination of license transfer applications stemming from changes in corporate control is sometimes overly extensive in both time and scope. With an open-ended review process, embracing issues well beyond the limited scope under section 214, approval of these applications has sometimes taken years.

Verizon urges the Commission to take steps, going beyond some of the proposals in the Notice

¹ The Verizon telephone companies (“Verizon”) are the local exchange carriers affiliated with Verizon Communications Inc. listed in Attachment A.

² While not raised here, the Commission in many cases must also approve the transfer of radio licenses under the standards set in the applicable provision of Title III of the Act.

here, to accelerate and streamline review of license transfer applications occasioned by changes in corporate control.

II. Protracted Review of Mergers and Acquisitions Disserves the Public Interest.

The statutory standard for review of applications under section 214, both to construct and extend lines and for transfers of control of existing lines, is the same – whether the request serves the “present or future public convenience and necessity.” 47 U.S.C. § 214(a). It is limited to assessing the *interstate and international* uses of the lines involved and determining if the “present and future public convenience and necessity” will be served by grant of the transfer application. 47 U.S.C. § 214(a). That examination necessarily looks only at the interstate and international services offered through those lines, not services and capabilities that are beyond the Commission’s statutory jurisdiction, such as actual or potential competition for intrastate services.

In most instances, there will be little question that at least the same interstate/international services will be offered to the same customers following the transfer of the lines, and that the public may further benefit by access to a richer array of interstate services following transfer of control. Review of such applications should be swift and, in many instances, can be *pro forma*, with approval automatic after a brief comment period.

If the review of such applications is protracted, however, the public interest benefits arising from a change in corporate control could be reduced, or disappear altogether. Needed network upgrades will be delayed and service to the public could suffer. New innovative services and technologies could be delayed, depriving the public of the benefit of new telecommunications capabilities for some period of time. In extreme cases, delays could cause the parties to abandon their mergers or acquisitions altogether, negating the public benefits.

Even in those instances in which there may be questions about the interstate/international service impact of an application, including the extreme cases where the Commission ultimately finds that a proposed transaction does not serve the public interest, knowledge that the application will be acted upon in a time certain benefits principals, competitors, and customers alike. In order to make key decisions, the principals to the transaction require the business certainty of knowing when the fate of their proposal will be decided. And customer confidence is bolstered by knowing the status of the company that is providing them with service or proposing new services. Timely information on the status of the transaction will allow customers to assess its effects on their purchasing decisions.

It will benefit all affected parties to have a time certain when applications for changes in corporate control will be acted upon. They should know when non-controversial transactions will become effective and when rulings on more complex arrangements will be forthcoming. The proposals set out below will accomplish those goals.

III. The Commission Can Reduce Processing Time By Not Duplicating Review By Other Agencies and By Coordinating Internal Processes.

Besides confining its review to the interstate/international service impact of the change in corporate control, as discussed above, the Commission can also expedite processing by limiting its review to matters over which it, rather than another federal agency, has exclusive substantive responsibility. In the past, the Commission's review has largely duplicated the work of other agencies, such as the Department of Justice ("DOJ") or the Federal Trade Commission ("FTC"). For example, the DOJ, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18(a), is responsible for conducting pre-merger reviews of proposed mergers and acquisitions for compliance with the antitrust laws. If the Commission defers to this

comprehensive process and does not attempt to duplicate DOJ's efforts, its review can be substantially reduced in scope and time. Similarly, in cases where the FTC undertakes review in lieu of DOJ, the Commission should not duplicate those efforts.

Recognizing this duplication, and noting that "75-80 percent of the final orders on these major transactions are horizontal merger analysis or vertical merger analysis following the ... merger guidelines at Justice," Chairman Powell has stated, "I personally would like to see much less of that." Michael Powell, Speech before American Bar Association Antitrust Section, March 28, 2001, *quoted in FCC's Powell Questions Agency Merger Review Role*, CHICAGO TRIBUNE, March 29, 2001. Similarly, former Commissioner Furchtgott-Roth wrote that "[m]erging companies should have to jump through at most one, not two, federal antitrust hoops, and that hoop should be held out by the agency with the express statutory authority and expertise to do so. That agency is the Department of Justice." *Applications for Consent to the Transfer and Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee*, Separate Statement of Commissioner Harold Furchtgott-Roth, 14 FCC Rcd 2160 (1999).

In addition, Commission review time need not be increased just because more than one Commission Bureau or Office has responsibility for different aspects of the proposal. *See Declaratory Ruling and Notice of Proposed Rulemaking*, FCC 01-205, & 32 (rel. July 20, 2001) ("Notice"), where the Commission asks for comments on whether the presence of related applications in other Bureaus should remove a merger application from streamlined review. In such cases, either the Bureaus or Offices should conduct concurrent proceedings, subject to the same deadline, or they should appoint a cross-Bureau task force to conduct a single proceeding, review the related applications, and develop a single recommendation to the Commission. There

is surely no reason for *seriatim* reviews, which will serve only to delay final resolution. Instead, the deadlines established for Commission review should bind all applicable Bureaus and Offices.

IV. Non-Controversial Applications Should Be Limited To *Pro Forma* Notices.

The shortened review periods proposed in the Notice are an important step in the right direction, but they do not go far enough to afford all affected parties the certainty that they need. *See id.* at & 26. To avoid unnecessary delays in Commission approval, Verizon proposes as an alternative the following process for “non-controversial” applications. First, the Commission should define as non-controversial (1) any application for a change in corporate control in which all of the principals have been classified as “non-dominant,” and (2) any such application in which one of the parties is classified as “dominant,” but where all other entities involved in the transaction had revenues from regulated telecommunications operations in the previous year that were below the revenue threshold to be considered a “Class A” company under Part 32 of the Commission’s rules, *i.e.*, \$100 million, indexed for inflation since October 19, 1992. *See* 47 C.F.R. §§ 32.9000, 32.11.³ Non-controversial applications would be in the form of a *pro forma* notification, similar to that afforded assignments and transfers of control in the wireless and international context. *See* Notice at & 27, citing 47 C.F.R. § 63.24.⁴ Under that procedure, the

³ The reference to this section is intended only to propose adoption of the revenue threshold, regardless of whether or not the company otherwise qualifies as a “telephone company” under the Commission’s rules.

⁴ Changes of control involving a company that faces imminent business failure or reorganization under Chapter 11 of the U.S. Bankruptcy Act should likewise be considered non-controversial. *See* Notice at & 20. *Pro forma* treatment of such applications could benefit the public by preventing discontinuance of service during processing of the application (assuming there is no unique issue, such as section 271 compliance, involved).

Commission would need to be informed of the transaction within 30 days after the assignment is consummated.⁵

Applications to transfer corporate control over lines under section 214 involving relatively small entities, or where a larger entity acquires or merges with a small company, rarely, if ever, raise significant public interest issues under the Communications Act.⁶ And, with the continued growth of competition in all phases of the telecommunications industry, such transactions are likely to be of even less public interest concern. In the competitive marketplace, companies involved in such transactions should have the business certainty that non-controversial transactions will not be delayed by unnecessary regulatory scrutiny.

V. Review of Other Transactions Should Be Streamlined.

Applications involving changes in corporate control that do not fit within the above parameters should still be subject to streamlined review on a schedule similar to discontinuances by dominant carriers under section 63.73. Under that procedure, the public would be afforded thirty days to comment on an application for change in corporate control. If there are no comments or the Commission does not consider any objections to be valid bases to delay the

⁵ Alternatively, for non-controversial applications involving a carrier that is classified as “dominant” acquiring or merging with another carrier, the Commission could require the notification to be submitted at least thirty days prior to the acquisition. That would allow the Commission time to seek public comment under a fifteen-day schedule and give the Commission sufficient time to address any unusual circumstances. Unless Commission action were taken during the thirty-day period, the carriers would be free to close the transaction. This process is similar to the rule for discontinuance of service by non-dominant carriers specified in section 63.71 of the Rules. That rule also automatically grants a dominant carrier’s discontinuance application after 60 days if there is no Commission action during the review period and provides for a thirty-day comment period.

⁶ Those mergers that meet the statutory threshold would still be subject to Department of Justice review under the Hart-Scott-Rodino process. *See* 15 U.S.C. § 18(a). Under law, such transactions would not be permitted to close until that review has been completed.

transaction, the merger or acquisition could close after sixty days with no affirmative Commission action. If there are circumstances that require additional Commission review, the Commission would notify the principals in writing that the transaction is not automatically approved. That notice should specify an extended deadline for Commission review, to provide the industry with some certainty that the transaction would be given prompt review.

If the Commission believes that the proposal is sufficiently complex or controversial that it must issue an order approving or disapproving the change in control, or approving with conditions, the notification would so specify, and the transaction would not be permitted to close pending issuance of such an order. However, the notice should also specify a date certain when that order can be anticipated. Except in extremely unusual circumstances involving applications that raise a large number of complex issues, the entire review period should not exceed the 180 day target the Commission has already established. *See Streamlining FCC Review of Applications Relating to Major Transactions*, FCC Transaction Team, Web posting dated Feb. 13, 2001, at <http://www.fcc.gov/transaction/>. In any event, the Commission should extend that deadline only on a case-by-case basis rather than specifying in advance that all applications of a certain type would be subject to a longer review period. *See Notice at & 26.*

VI. No Review Should Be Needed Of Internal Corporate Restructurings.

The Commission asks what, if any, regulatory treatment should apply to internal corporate restructurings that result in a new subsidiary assuming common carrier responsibilities. Notice at & 28. There is no reason for the Commission to review such reorganizations at all. Although they may involve technical changes of control (*e.g.*, from one internal subsidiary to another) that may require a *pro forma* filing, such reorganizations could not affect the manner in which service is being provided to the public or raise competitive issues. Naturally, any general

conditions or restrictions or any specific conditions or restrictions on the telecommunications services in question or on the service provider would remain in effect after the reorganization unless waived or lifted, and that would take affirmative Commission action.

VII. Waivers Should Be Addressed On a Case-By-Case Basis.

Nor should the Commission adopt any particular process to deal with waivers of its rules that are filed as part of a merger or acquisition application. *See* Notice at & 31. Some waivers are substantive and may warrant separate public comment and policy review by the Commission, while others are minor and non-controversial and could be granted summarily. Instead of promulgating a rule that attempts to cover the entire range of possible waiver requests, the Commission should adopt its tentative conclusion and deal with waivers on a case-by-case basis. *See id.*

VIII. Conclusion

Accordingly, the Commission should adopt the streamlined procedures for applications to approve changes in corporate control discussed above.

Respectfully submitted,

/S/

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.