

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

In the Matter of)
)
Qwest Wireless, LLC and Cellco Partnership) WT Docket No. 04-264
d/b/a Verizon Wireless Seek Commission)
Consent for the Assignment of Sixty-Two)
Broadband Personal Communications Services)
Licenses)

To: Chief, Wireless Telecommunications Bureau

OPPOSITION TO SNAKE RIVER REQUEST FOR INFORMAL ACTION

Qwest Wireless LLC (“Qwest”) and Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) (collectively “Applicants”) hereby oppose the untimely “Informal Request for Commission Action”¹ filed by Snake River Personal Communications Services (“Snake River”) in the above-referenced proceeding.² As demonstrated below, Snake River’s Request is both substantively and procedurally without merit.³ The Commission should therefore summarily

¹ Snake River Personal Communications Services, Informal Request for Commission Action, WT Docket No. 04-264, filed Sept. 13, 2004 (“Request”).

² Public Notice, *Qwest Wireless, LLC and Cellco Partnership d/b/a Verizon Wireless Seek Commission Consent for the Assignment of Sixty-Two Broadband Personal Communications Services Licenses*, WT Docket No. 04-264, DA 04-2254 (rel. July 22, 2004) (“Public Notice”).

³ The Request is untimely. The Commission established a public comment cycle whereby petitions to deny were due August 23, 2004. While Snake River purportedly “does not oppose the acquisition and therefore did not file a petition to deny,” it nonetheless requests that the Commission impose roaming-related conditions on grant of the applications, and that the Commission do so “prior to acting on the application.” Request at 2 n.3, 5. Snake River’s request is thus, in effect, a re-captioned and late-filed petition to deny. Snake River provides no explanation as to why Snake River’s Request was not filed within the prescribed deadlines. Consideration of this eleventh-hour filing under these circumstances would undermine the integrity of the Commission’s Title III licensing processes, countenance dilatory conduct and

reject Snake River's Request and expeditiously grant the assignment applications that are the subject of this proceeding, without the conditions Snake River seeks to have imposed on Verizon Wireless.

DISCUSSION

Snake River posits in general terms that it "has witnessed less and less favorable roaming arrangements as the CMRS industry matures and consolidates" and is concerned that such consolidation, "typified by Verizon Wireless's acquisition of Qwest Wireless's wireless assets, will result in a roaming 'squeeze out' whereby the large, nationwide and super-regional CDMA carriers favor one another to the detriment of small, rural CDMA CMRS carriers and their subscribers."⁴ Snake River would thus have the Commission: "(1) Requir[e] Verizon Wireless to allow roaming access to the merged network by subscribers of Snake River and similarly situated subscribers of other rural wireless carriers at affordable rates," and "(2) Ensur[e] that Verizon Wireless subscribers can access Snake River's CMRS network and other rural wireless carriers' networks at affordable rates."⁵

Snake River's Request is utterly meritless. It is in conflict with settled Commission precedent that rejects consideration of roaming issues in license transfer application proceedings. For at least six separate reasons, the Staff should immediately deny its untimely, deficient pleading without consideration.

First, Snake River has no basis for its claim under the Commission's rules, which obligate CMRS providers, including Verizon Wireless and Snake River, only to provide manual

encourage meritless filings interposed only for delay. For this reason alone, Snake River's Request should be summarily denied.

⁴ Request at 1-3.

⁵ *Id.* at 5.

roaming capabilities to customers of co-channel licensees from other markets.⁶ There is no obligation under Section 20.12 of the rules to enter into automatic roaming arrangements with other carriers. The Commission has previously rejected similar entreaties, and Snake River has offered no basis for departing from this sound precedent.⁷

Second, the relief Snake River seeks, if granted, would undermine the policy underlying the Commission's roaming rule. The Commission tentatively concluded in the *2000 NPRM* that an automatic roaming rule is unnecessary "unless it is clear that providers' current practices are unreasonably hindering the operation of the market to the detriment of consumers."⁸ In this regard, the Commission stated that:

Only where market forces alone are not sufficient to ensure the widespread availability of competitive roaming services, and where roaming is technically feasible without imposing unreasonable costs on CMRS providers, do we believe it may be in the public interest to impose a roaming requirement that will facilitate the widespread availability of roaming and promote competition in wireless services.⁹

Snake River raises no facts to indicate that market forces are insufficient to meet the Commission's objectives. Indeed, Snake River's own claims prove otherwise. In 2001 and 2002 -- after the Commission re-affirmed in the *2000 NPRM* that CMRS providers only have *manual* roaming obligations -- Snake River was able to enter into automatic roaming agreements with both Qwest and Verizon Wireless.¹⁰ Verizon Wireless, in fact, has entered into numerous

⁶ 47 C.F.R. § 20.12(c).

⁷ See *Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Co.*, 12 FCC Rcd. 22280, ¶¶ 2, 15 (1997) ("BAMS-NYNEX") (rejecting request that grant of transfer of control applications be conditioned on "'firm rules of behavior' to prevent discrimination against Cellco's competitors" in regard to roaming arrangements).

⁸ See *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, Notice of Proposed Rulemaking, 15 FCC Rcd. 21628, 21635 (2000) ("2000 NPRM").

⁹ *Id.*

¹⁰ See Request at 2, 4.

roaming agreements with rural carriers, evidencing that the competitive market is functioning properly to consumers' benefit without Commission intervention. Here, however, Snake River would have the Commission supplant market forces and, by determining what are "affordable" rates, effectively dictate the terms of a contractual relationship between the parties.¹¹ Such an outcome would be contrary to settled precedent and to the public interest.

Third, grant of the above-captioned applications will have no bearing on Snake River's existing roaming arrangements. Because Qwest had announced that it was exiting the facilities-based CMRS business long before it entered into its agreement with Verizon Wireless, the Snake River-Qwest roaming agreement would have been terminated irrespective of the instant transaction. Moreover, Verizon Wireless already has a roaming agreement in effect with Snake River – a fact which Snake River concedes – and that contract is unaffected by this transaction.

Fourth, a fundamental premise of Snake River's allegations – concerns arising from purported consolidation in the CMRS industry – is incorrect. Applicants have already demonstrated that Qwest and Verizon Wireless will remain competitors and thus no "consolidation" will result from the transaction.¹²

Fifth, Snake River's claims are improperly raised in this application proceeding, because they relate to the CMRS industry generally. The conditions Snake River would impose on

¹¹ See Request at 5. It is well-established that the Commission does not involve itself in private contractual disputes. *Regents of University System of Georgia v. Carroll*, 338 U.S. 586, 602 (1950) (holding that the Commission is not the proper forum to litigate contractual disputes between licensees and others); *Listeners' Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987) (endorsing "the Commission's longstanding policy of refusing to adjudicate private contract law questions"); *Applications of Vodafone AirTouch, Plc and Bell Atlantic Corporation*, Order on Further Reconsideration, 17 FCC Rcd 10998, ¶ 6 (2002); *Application of Cellular, Inc. and Pacific Telecom Cellular of Wisconsin, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 5091 (MSD 1993) (no reason to withhold action on a transfer application pending the outcome of a private contractual matter).

¹² See Application, File No. 0001789538, Exhibit 1.

Verizon Wireless by their terms extend beyond Snake River itself, because they would force the Commission to regulate an indeterminate number of roaming arrangements with “similarly situated subscribers of other rural wireless carriers.”¹³ The appropriate means for the Commission to address such issues is a Notice of Inquiry or rulemaking, not a licensing proceeding.¹⁴ As noted above, the Commission has already raised precisely these issues in a pending Notice of Proposed Rulemaking. It is therefore inappropriate to consider these broader policy questions here.¹⁵

Sixth, Snake River has alleged no specific harm appropriate for redress by the Commission. Snake River asserts without substantiation that it “*may* be irreparably harmed by this consolidation of the CDMA CMRS market in Idaho,” yet acknowledges that it is now operating under an existing roaming agreement with Verizon Wireless and does not allege any misconduct or unreasonable behavior on Verizon Wireless’s part.¹⁶ The perceived harm, by Snake River’s own admission, is speculative. Commission precedent firmly establishes that

¹³ Request at 2.

¹⁴ See *BAMS-NYNEX* at ¶ 15 (“Matters affecting the industry as a whole and misdeeds whose occurrence is based upon mere speculation are better considered in rulemakings than in specific licensing proceedings. In the latter, they may serve only to complicate and delay transactions that will benefit the public.”).

¹⁵ See *2000 NPRM*, 15 FCC Rcd. at 21636. The Commission also raised these issues more recently in its *Notice of Inquiry* seeking information relating to its annual CMRS Competition Report. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Notice of Inquiry, 19 FCC Rcd. 5608, ¶ 57 (2004).

¹⁶ Request at 3 (emphasis added). Moreover, Snake River is aware of whom to contact at Verizon Wireless concerning this matter, but to date has not contacted Verizon Wireless to express concern about the terms of the existing agreement.

speculative assertions concerning a transferee's roaming arrangements do not provide a basis for denying or conditioning a transfer of control or assignment application.¹⁷

CONCLUSION

For the foregoing reasons, the Commission should deny Snake River's request and promptly grant the above-captioned application without the conditions requested therein.

Respectfully submitted,

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¹⁷ See *Metromedia Co.*, 7 FCC Rcd. 714, ¶ 11 (1992) (finding allegations that licensee “will no longer be afforded the favorable roamer rates that it is now receiving” to be “speculative at best and it is by no means clear that the Commission would remedy a change in roamer rates in any event”), *aff'd on review* 8 FCC Rcd. 870 (1993), *aff'd sub nom. Telephone and Data Systems, Inc. v. FCC*, 19 F.3d 42, 47-48 (1994) (allegation that grant of transfer of control application would force petitioner “to lower the rates it charges to roamers ... amounts to nothing more than ‘unadorned speculation.’”); *GTE Mobilnet of Houston Limited Partnership*, 2 FCC Rcd. 4156, ¶¶ 5-6 (1987) (objections based on “a certain fear that [assignee] will fail to enter into timely and suitable resale and roamer arrangements with [petitioner] in” particular markets are premature and insufficient to impose conditions on license); *Mobile Communications Corp. of America and Bellsouth Corp.*, 2 FCC Rcd. 5902, ¶ 5 (1987) (status as “signatory to roaming agreements with” systems subject to transfer of control applications is insufficient to confer standing to oppose the applications).

CERTIFICATE OF SERVICE

I, Robert G. Morse, hereby certify that true and correct copies of the foregoing “Opposition to Snake River Request For Informal Action” have been served this 24rd day of September, 2004, by United States mail, first class postage prepaid and via electronic transmission upon the following:

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