

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

In the matter of)	
)	
Application of Verizon Hawaii Inc., Bell Atlantic)	
Communications, Inc. (d/b/a Verizon Long)	WC Docket No. 04-234
Distance) and Verizon Select Services Inc., and)	
Paradise MergerSub, Inc.)	
)	
For Consent to Transfer Control of Verizon)	
Hawaii Inc. and Certain Assets and Long Distance)	
Customer Relationships Related to Interstate)	
Interexchange Telecommunications Service in the)	
State of Hawaii)	

ORDER ON RECONSIDERATION

Adopted: December 15, 2004

Released: December 15, 2004

By the Chief, Wireline Competition Bureau:

1. In this Order on Reconsideration, we address Pacific LightNet, Inc.'s (PLNI) petition for reconsideration¹ of our July 15, 2004 Public Notice that accepted the above referenced application² for filing pursuant to our streamlining procedures³ as well as our August 17, 2004 Public Notice announcing the grant of authorization to transfer control of this application.⁴ For the reasons set forth below, we deny the petition for reconsideration.

2. In the proceeding on the *Transfer of Control Application*, we received one opposing comment in response to the *Streamlining Notice* from PLNI requesting that the Wireline Competition Bureau (Bureau) either reject or remove the application from streamlined treatment or impose stringent conditions on the terms of the transfer.⁵ PLNI argued that the application raises public interest concerns because the proposed transaction threatens: 1) to diminish the efficiency of Hawaii's only incumbent network's operations support system; 2) an increase in the rates businesses, consumers, and competitors pay for the new entity's service; and 3) national security concerns because of the Carlyle Group's "looming strategic interest in developing a Trans-Pacific network to serve areas where the United States

¹See Pacific LightNet, Inc.'s Petition for Reconsideration, WC Docket No. 04-234 (filed Sept. 16, 2004) ("*Petition*").

²See Application of Verizon Hawaii, Inc. et al., Transferors, and Paradise MergerSub, Inc., Transferee for Consent to Transfer Control of Verizon Hawaii Inc. and Certain Assets and Long Distance Customer Relationships Related to Interstate Interexchange Telecommunications Service in the State of Hawaii, Consolidated Application for Consent to Transfer Control (filed June 21, 2004) ("*Transfer of Control Application*").

³47 C.F.R. § 63.03. See Domestic Section 214 Application Filed for Transfer of Control of Verizon Hawaii Inc. to the Carlyle Group, DA 04-2148, WC Docket No. 04-234 (rel. July 15, 2004) ("*Streamlining Notice*").

⁴See Streamlined Domestic Section 214 Application Granted, DA 04-2541, WC Docket No. 04-234 (rel. Aug. 17, 2004) ("*Grant Notice*").

⁵See PLNI Comments at 2.

military has a significant presence.”⁶

3. In response to their allegation, the applicant, Paradise MergerSub, Inc. (PMSI), filed reply comments and requested that the Bureau accept them as late-filed reply comments or, alternatively, as a written presentation.⁷ PMSI argued in its reply comments that: 1) it plans to utilize the back-office systems currently in place for Verizon Hawaii for up to nine months from the date of closing of the transaction as it transitions to its own back-office systems; 2) it will not raise its rates as it transitions to independent back-office systems; and 3) it is inappropriate for the Commission to address PLNI’s concerns regarding future transactions that are not currently before the Commission.⁸

4. We concluded that the concerns raised by PLNI were not sufficient to persuade us to remove the application from streamlined treatment because, among other reasons, we relied on PMSI’s representation that it has a reasonable plan for developing and transitioning to independent back-office systems without “reduction, impairment, or discontinuance of service to any customer,” and without raising its rates as it transitions to independent back-office systems.⁹ We also reasoned that we can evaluate the effect of any future transactions as they are brought before the Commission.¹⁰

5. On September 16, 2004, PLNI filed this *Petition* requesting that the Bureau reconsider its decisions to accept for streamlined treatment and subsequently grant the *Transfer of Control Application*. In its *Petition*, PLNI argues that: 1) the Bureau improperly relied on PMSI’s late-filed reply comments to the *Streamlining Notice*; 2) PMSI’s representation in its reply comments to the *Streamlining Notice* that it had a plan for developing and transitioning to an independent operations support system was vague and unverified; and 3) PMSI’s proposal to transfer Verizon Hawaii, the only incumbent telephone network in Hawaii, to the Carlyle Group warrants more rigorous scrutiny.

6. We reject PLNI’s first argument because the Bureau has the discretion to accept late-filed pleadings to develop a complete record.¹¹ PMSI’s submission was also acceptable as a written presentation that was not *ex parte* because the parties were served.¹² Furthermore, we agree with PMSI that PLNI’s remaining arguments are repetitious of its comments in response to the *Streamlining Notice* and have therefore already been addressed.¹³ Reconsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or

⁶ See PLNI Comments at 7-9.

⁷ See PMSI Reply, WC Docket No. 04-234 (filed Aug. 6, 2004). Reply Comments were due on August 5, 2004. The Wireline Competition Bureau accepted the applicants’ late-filed reply or written non-*ex parte* presentation.

⁸ See PMSI Reply at 2-4.

⁹ See *Grant Notice* at 2.

¹⁰ *Id.* We note that, pursuant to section 1.65 of the Commission’s rules requiring applicants to update the record in a pending application, PMSI submitted to the instant docket a copy of a Petition for Declaratory Ruling that was filed with the International Bureau. See *Petition of Paradise MergerSub, Inc. for a Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended*, WC Docket No. 04-234 (filed Oct. 6, 2004). The Petition, currently pending, requests a Commission determination that PMSI may exceed 25 percent alien investment pursuant to section 310(d)(4) of the Communications Act of 1934, as amended.

¹¹ See generally Notice of Streamlined Domestic 214 Application Granted, DA 04-3786, WC Docket No. 04-397 (rel. Nov. 30, 2004) (stating that accepting late-filed comments can provide us a more complete record upon which to base our decision without prejudicing any party).

¹² See 47 C.F.R. 1.1202(b)(1).

¹³ See Opposition to Petition for Reconsideration, WC Docket No. 04-234, dated September 29, 2004 at 3.

existing until after the petitioner's last opportunity to present such matters.¹⁴ PLNI also raises statements that PMSI has made, after our grant of authorization, to the state commission and elsewhere that it may at some future point seek a rate increase.¹⁵ We do not find that a reference to a future, undefined possibility undermines the applicants' specific representations in this proceeding that they will not raise rates as they transition to new ownership and new back-office systems, or prevents us from relying on such specific representations in approving this transaction. Whatever general statements PMSI may have made to preserve its position going forward, they would obviously give way to PMSI's specific representation here, rendering PLNI's argument little more than makeweight. We affirm, for the same reasons as we did in the *Grant Notice*, that the arguments raised by PLNI in its *Petition* are not sufficient to persuade us to remove the application from streamlined treatment.¹⁶ Nor are the arguments sufficient to persuade us to reverse our previous decision to grant the *Transfer of Control Application*. We, therefore, deny PLNI's *Petition*.

7. Accordingly, IT IS ORDERED that, pursuant to the authority granted by sections 1, 4(i), 4(j), 214 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 214 and 405, and sections 0.291 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.291 and 1.106, PLNI's *Petition for Reconsideration* IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION


Jeffrey J. Carlisle, Chief
Wireline Competition Bureau 

¹⁴ See *Northstar Technology, LLC*, Order on Reconsideration, FCC 04-257 at ¶ 11 (rel. Nov. 9, 2004); *GTE Corp. Transferor, and Bell Atlantic Corp., Transferee*, Order on Reconsideration, 18 FCC Rcd 24,871, 24,873, at ¶ 5 (Enf. Bur. 2003); *Armstrong Communications, Inc. Petition for Relief Pursuant to Section 252(E)(5) of the Telecommunications of 1996 and Request for Additional Relief*, Order on Reconsideration, 14 FCC Rcd 9521, 9521-22, at ¶ 2 (Com. Car. Bur. 1999) (denying a petition for reconsideration because no new facts or arguments were raised).

¹⁵ PLNI Reply to Opposition to Petition for Reconsideration at 2-3.

¹⁶ Indeed, since the application has already been granted pursuant to our streamlined procedures, the application can no longer be simply removed from streamlining.