

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

In re Applications of

RURAL CELLULAR CORP. , Transferor

and

WT Docket No. 07-208

CELLCO PARTNERSHIP d/b/a VERIZON
WIRELESS, Transferee

for Consent to the Transfer of Control of
Commission Licenses and Authorizations
Pursuant to Sections 214 and 310(d) of the
Communications Act.

To: Chief, Wireless Telecommunications Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Vermont Public Interest Research Group (“VPIRG”) respectfully urges the Wireless Telecommunications Bureau (“Bureau”) to deny the Petition for Reconsideration (“Petition”) filed November 16, 2007 by Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless” or “VZW”) and Rural Cellular Corporation (“RCC”). Verizon Wireless and RCC ask the Bureau to reconsider and set aside its decision (DA 07-4604, rel. Nov. 13, 2007) granting VPIRG’s Motion for Extension of Time. In support of this opposition, the following is submitted:

In the Petition, VZW and RCC misstate the basis for VPIRG’s extension request. It is true that VPIRG is *primarily* concerned “about the potential effects on competition of a combination of Verizon Wireless and RCC in the state of Vermont.”¹ However, VPIRG’s Motion for Extension of Time was framed far more broadly:

In several markets, VZW holds one cellular license and RCC the

¹ Petition, at 2.

other. In many rural areas, there is limited competition from other national or even local carriers. In a number of markets, the two parties to this merger hold spectrum in excess of the 70 MHz “initial screen.” By the applicants’ count, there are 26 counties where the combined entities’ spectrum would exceed the 70 MHz “initial screen.”

VPIRG Motion, at 2.

As the Vermont Department of Public Service (“DPS”) notes in its Petition to Condition Approval or Deny, filed November 13, 2007, at 9:

Here, post-transaction, cellular, PCS and SMR spectrum (“relevant spectrum” holdings of Verizon Wireless will be 75 MHz or greater in 11 of Vermont’s 14 counties.

There are a dozen or more counties in states *other than Vermont* where the proposed transaction would result in Verizon Wireless holding relevant spectrum in excess of the “initial screen,” as well as more than 700,000 RCC subscribers and millions of GSM roamers potentially affected by the proposed transaction. Contrary to the Applicants’ claims, the VPIRG Motion for Extension of Time was based upon the impact that the transaction would have on RCC subscribers and GSM roamers in all states, not just the concerns of citizens of Vermont:

If the transaction is approved as proposed, it will have far-reaching effects on RCC subscribers, who will lose access to analog (and, presumably, TDMA) services as early as February 18, 2008². In addition, most RCC subscribers will be required to transition from the current GSM network to VZW’s CDMA service in approximately eighteen months. The transaction will also affect millions of customers of other carriers who have deployed GSM technology; when those customer travel to or through the RCC territories, they obtain service as roamers, and there is concern that the GSM network on which they rely for service will not be upgraded or appropriately maintained once VZW completes its overlay of CDMA in the GSM service areas. The public does not have the ability to evaluate these issues in a thirty-three day window.

² *Id.* at 2 (n.4) and 13.

VPIRG Motion at 2-3.³ Thus, Applicants' contention that VPIRG requested an extension of time solely because "it needed more time to submit an opposition to Verizon Wireless's acquisition of [RCC's Vermont] properties"⁴ is incorrect.

Verizon Wireless asserts that its heretofore undisclosed "commitment to the Department of Justice ("DOJ") to divest all of RCC's overlapping cellular operations in Vermont"⁵ means that "the basis for VPIRG's opposition...no longer exists."⁶ As previously noted, the basis for VPIRG's Motion for Extension of Time (not an "opposition") was much broader than the impact of the aggregation of spectrum in the counties in Vermont where Verizon Wireless and RCC have overlapping spectrum interests. In any event, far from rendering the extension of time requested by VPIRG unnecessary, the divestiture commitment raises at least as many questions as it answers:

- Why did Verizon Wireless, which admits both that it has been in discussions with potential buyers since mid-September, and that it made a divestiture commitment to DOJ on October 30, wait until three days *after* the original deadline for filing petitions to deny to disclose – in a procedural filing – that it had made such a commitment?
- Is the Verizon Wireless divestiture commitment limited to overlapping operations in Vermont, or does it extend to the other RCC operating territories as well?
- Why, nearly a week after Verizon Wireless made a divestiture commitment to DOJ, did a Verizon Wireless spokesperson reaffirm to a reporter for a Vermont TV station that "Verizon Wireless is committed to maintaining the GSM towers in the state"?⁷
- In light of its divestiture commitment to DOJ, does Verizon Wireless still plan to cancel its spectrum leases in the territories where it has overlap-

³ There is, of course, no requirement in the Commission's rules that a party seeking extension of a comment period establish that it has "standing" with respect to all issues potentially raised by a proposed transaction, and the Applicants have not claimed otherwise. *Cf.* 47 U.S.C. 309 (d)(1), which limits the class of persons eligible to file a petition to deny to "parties in interest."

⁴ Petition, at 1.

⁵ *Id.*

⁶ *Id.* at 2.

⁷ See WCAX-TV News: "Sanders Questions Verizon, Unicel Deal" dated November 5, 2007 at http://www.wcax.com/Global/story.asp?S=7315610&nav=menu183_2 (last visited November 25, 2007).

ping license interests with RCC?

- In light of the divestiture commitment, how does Verizon Wireless plan to deliver “the many benefits to the public that will result from the merger, including deployment of new wireless broadband service that will benefit customers within the RCC footprint”?⁸
- If, as the Applicants claim, the divestiture commitment nullifies the basis for VPIRG’s Motion for Extension of time, is it not also a sufficiently significant and substantial change as to require the submission of an amendment pursuant to Section 1.65 of the Commission’s Rules?⁹
- If the divestiture commitment made to DOJ on October 30, 2007 was sufficient to address the concerns of the Executive Branch agencies, why did Gregory Pinto of the Department of Homeland Security (“DHS”) write to the Commission on November 9, 2007 requesting, on behalf of DHS, DOJ and the Federal Bureau of Investigation, that the Commission defer action on the applications pending completion of the agencies’ review of the matter for any national security, law enforcement (presumably including anti-trust enforcement) and public safety issues?

Verizon’s unexplained delay in submitting a Section 1.65 amendment to report its divestiture commitment should not be condoned by the Bureau, and the Applicant’s efforts to use the divestiture commitment as a basis for reconsidering the extension of time should not be rewarded.

Verizon Wireless and RCC also raise several miscellaneous claims regarding the Bureau’s action. They claim that the Bureau has not reconciled its action with Commission policy that extensions of time are not routinely granted and assert that the length of the extension is unprecedented. Verizon Wireless and RCC also claim that, unless the

⁸ VPIRG agrees with the Vermont DPS, which stated in its Petition at 8 (in response to the Applicants’ claims that the merger would provide RCC customers with “improved quality of service” and “expanded seamless network coverage”) that the Commission should discount claimed public interest benefits that are either unverifiable or that will not be realized in the State of Vermont in the immediate future. It is difficult to fathom how a merger, accompanied by divestiture of overlapping spectrum interests in Vermont (and possibly elsewhere), will speed deployment of new wireless broadband service that will benefit RCC’s existing customers.

⁹ See 47 C.F.R. Section 1.65(a), which provides in pertinent part: “Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application. Whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate.”

Bureau reconsiders and sets aside its grant of the 90-day extension request, the public notice period will consume two-thirds of the Commission's 180-day time clock for reviewing transactions.

Compliance with the Commission's policy that "extensions of time are not routinely granted" requires nothing more of the Bureau than a review of the pleadings and a determination that, on balance, the extension of time is in the public interest. The Wireless Bureau's grant of the extension requested by VPIRG reflects its consideration of the competing interests of the applicants and members of the public and sets forth its conclusion that the public interest would be best served by grant of the extension request. The Bureau's order clearly complies with the Commission's policy.

Applicants reviewed seventy-odd cases (limited to those in the "major transactions archive" maintained by the Office of General Counsel) and were able to find only four transactions where extensions were granted, the longest of which was a thirty day extension. Had the applicants cast a wider net, they would have found that thirty-day extensions are not at all uncommon in Commission proceedings, and are granted at the Bureau level to achieve the "goal of assembling a full record in a proceeding."¹⁰

The applicants' other claims – that a ninety day extension is unprecedented and that the public notice period would unreasonably consume two-thirds of the Commission's 180-day time clock for reviewing transactions – should likewise be rejected. As markets become more concentrated, the need for careful scrutiny is heightened, and the Commission's 180-day time clock (which is nothing more than a goal, not an obligation) becomes increasingly irrelevant. In a case such as this, where the number of competitors

¹⁰ See, e.g., In re: 2006 Quadrennial Regulatory Review, MB Docket 06-121, Order DA 06-1663 (Media Bur., rel. Sept. 18, 2006) granting a thirty day extension in response to two motions filed on September 14, 2006

is likely to be reduced from four to three in some markets and three to two in others, careful scrutiny is required, even though that may mean that the Commission's review extends beyond 180 days. A cursory review of recent major transactions reveals that the Commission frequently takes more than 180 days to complete its review. Commission review of the merger of Verizon and MCI took 199 days;¹¹ Cingular and AT&T Wireless Services, 208 days;¹² VoiceStream, Powertel and Deutsche Telekom, 196 days;¹³ AT&T and BellSouth, 253 days.¹⁴ Notably, the time clock on the Commission's review of the sale of New England wireline exchanges by Verizon Wireless' parent to FairPoint now stands at day 257 and is still running.¹⁵

The Bureau's grant of the 90 day extension requested by VPIRG means that the formal comment period – if measured from the date of the public notice announcing the acceptance of the applications for filing -- will extend to day 120. VPIRG submits, however, that the time clock should not begin to run until some unknown future date when the merger application is amended to reflect the divestiture commitment and to incorporate a revised public interest showing. Viewed in that context, the Bureau's grant of the ninety day extension is not only reasonable, but the minimum necessary to permit interested parties and the Commission staff to complete a thorough and careful review of the proposed transaction.

¹¹ <http://www.fcc.gov/transaction/verizon-mci.html>

¹² http://www.fcc.gov/transaction/cingular-att_wireless.html

¹³ <http://www.fcc.gov/transaction/voicestream-deutsche.html>

¹⁴ <http://www.fcc.gov/transaction/att-bellsouth.html>

¹⁵ <http://www.fcc.gov/transaction/fairpoint-verizon.html>

Wherefore, Vermont Public Interest Research Group respectfully urges the Bureau to deny the Petition for Reconsideration and to affirm the grant of a ninety day extension of time in which to file petitions to deny the captioned applications.

Respectfully submitted,
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November 26, 2007

Certificate of Service

I certify that, on November 26, 2007, I sent copies of the foregoing "Opposition to Petition for Reconsideration" by first class U.S. mail to the following parties:

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