

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
)
RURAL CELLULAR CORPORATION and)
) DA 07-4192
CELLCO PARTNERSHIP d/b/a VERIZON)
WIRELESS) WT Docket No. 07-208
)
for Consent to Transfer Control of Licenses and)
Authorizations)
)
File No. 0003155487, *et al.*)

**COMMENTS
OF THE
VERMONT DEPARTMENT OF PUBLIC SERVICE**

On November 16, 2007, Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) and Rural Cellular Corporation (“RCC”) (collectively, “the Applicants”) filed a Petition for Reconsideration pursuant to Commission Rule 1.106,¹ requesting that the Wireless Telecommunications Bureau reconsider its Order granting an extension of 90 days for the filing of petitions to deny, oppositions, and replies in the above-captioned proceeding (“Reconsideration Petition”).²

Specifically, in the Reconsideration Petition the Applicants revealed that Verizon Wireless, having been in active confidential negotiations with several companies to divest all of RCC’s overlapping cellular operations in Vermont, committed to DOJ that it will divest those

¹ 47 C.F.R. § 1.106.

² *Rural Cellular Corp. and Cellco Partnership d/b/a Verizon Wireless for Consent To The Transfer Of Control Of Commission Licenses And Authorizations*, WT Docket No. 07-208, Order (DA 07-4604, rel. Nov. 13, 2007).

overlapping cellular operations.³ The Vermont Department of Public Service (“the Department of Public Service” or “the Department”) is encouraged by this announcement, yet not surprised. A transaction that would enable one entity to control all cellular spectrum in any market is likely to “substantially lessen competition.”⁴ It is no surprise that Verizon Wireless has been in discussions with the Department of Justice concerning a transaction that on its face demands Clayton Act review.⁵ Although the Department is encouraged by the announcement made by Verizon Wireless in support of its reconsideration request, the Department wishes to make clear that this announcement still leaves unresolved significant concerns expressed in the Department’s Petition to Condition Approval or Deny the acquisition by Verizon Wireless of Rural Cellular Corporation.⁶

The Commission’s review of the competitive effects of a transaction is not limited by traditional antitrust principles.⁷ Any divestiture plan intended to eliminate public harms that would weigh against the approval of an FCC-regulated transaction must serve the broader public interest.⁸ Vermont is unique in that wireless providers rely more heavily on cellular spectrum capable of providing signal coverage across challenging terrain. Vermont is also unique in that it relies on a single carrier – RCC – to sustain the state’s GSM network, which enables users of GSM phones, residents, business travelers and vacationers alike, to receive wireless service. Thus, in order for a divestiture plan associated with the acquisition of RCC by Verizon Wireless

³ Reconsideration Petition at p. 2.

⁴ *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket 04-70, *Memorandum Opinion and Order* (FCC 04-255, rel. Oct. 26, 2003) (“*Cingular/AT&T Order*”) at ¶ 39 (citing 15 U.S.C. § 18).

⁵ 15 U.S.C. § 18.

⁶ See *Rural Cellular Corp. and Cellco Partnership d/b/a Verizon Wireless for Consent To The Transfer Of Control Of Commission Licenses And Authorizations*, WT Docket No. 07-208, Petition to Condition Approval or Deny of the Vermont Department of Public Service (filed Nov. 13, 2007).

⁷ *Cingular/AT&T Order* at ¶ 42 (*citations omitted*).

⁸ *Id.*

to serve the broad public interest, it must ensure that the GSM network continues to operate in all areas of the state.

Moreover, to date the Applicants have (1) merely announced plans concerning divestiture of *overlapping cellular operations* in Vermont without any mention of the GSM network and (2) have not modified their Application presently before the Commission. The divestiture commitment contained in the Reconsideration Petition appears limited to divestiture of RCC's cellular operations in any Vermont market where Verizon Wireless also holds a cellular license. The Department is concerned that current plans for divestiture may exclude divestiture of RCC's cellular operations in Bennington, Windham, and southern Windsor counties in CMA 680, where Verizon Wireless currently has no cellular license. If procedurally this proceeding were to permit Commission review of the competitive impacts of the Transaction on CMA 680, it is likely that divestiture of the entire CMA would be demanded as a lawful and appropriate condition of approval of the Transaction.⁹

A divestiture proposal that would enable Verizon Wireless to acquire RCC's cellular license in Bennington, Windham, and southern Windsor counties would raise serious issues for competition, public safety, and economic development. In these counties, RCC is the only GSM operator and Verizon Wireless holds PCS licenses that it has been working to build out. If Verizon Wireless, partial to CDMA technology, were to acquire the RCC cellular licenses in that area, it would only make sense for them to convert them to CDMA, leaving no licensees providing GSM service, and no available cellular spectrum for use in the provision of GSM service. GSM phones would not work in this part of Vermont. With all cellular spectrum in a market dedicated to CDMA operations, it would be extremely difficult for a competitor to gain

⁹ CMAs are the most exact divestiture area for purposes of eliminating competitive harm. *Applications of Western Wireless and ALLTEL Corporation*, WT Docket No. 05-50, Memorandum Opinion and Order (FCC 05-138, rel. Jul. 19, 2005) at n. 288.

suitable spectrum necessary to reintroduce GSM to those counties. Thus, CMA 680 should be divested to a GSM operator in its entirety.

* * * * *

The Department is hopeful that the Applicants will soon elaborate on their plan for divesting Vermont markets. The Department continues to believe that such divestiture plans should involve complete divestiture of all of RCC's operations in Vermont markets to a carrier or carriers that make commitments to maintain the integrity and longevity of the GSM network. In the event that the Applicants and Commission do not agree that all portions of RCC's Vermont operations should be divested, the Commission should require that Verizon Wireless maintain the GSM network in such markets for a period of six years.

Respectfully submitted,

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November 26, 2007

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing COMMENTS to be served via First Class Mail, postage prepaid, upon:

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This 26th day of November, 2007.

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