

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re Applications of)	
)	
RURAL CELLULAR CORP., Transferor,)	WT Docket No. 07-208
)	
and)	File Nos. 0003155487, et al., ITC-T/C-
)	20070904-00358
CELLCO PARTNERSHIP d/b/a VERIZON)	
WIRELESS, Transferee)	ISP-PDR-20070928-00011, ISP-PDR-
)	20070928-00012
for Consent to the Transfer of Control of)	
Commission Licenses and Authorizations)	
Pursuant to Sections 214 and 310(d) of the)	
Communications Act)	

**OPPOSITION TO CHATHAM AVALON PARK
COMMUNITY COUNCIL'S PETITION FOR
RECONSIDERATION**

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SUMMARY

As a fundamental matter, petitioner Chatham fails to satisfy the minimum statutory and regulatory prerequisites for filing a petition for reconsideration of the Commission's *Order* in this proceeding. Specifically, the Petition for Reconsideration must be dismissed for two basic reasons: First, Chatham has failed to demonstrate how a group of individuals located in the Chicago area is affected in any way by the approval of a transaction that does not involve any wireless properties even remotely close to their community and not even within their state. More particularly, Chatham offers no explanation why this group of individuals would have any interest in or be harmed by the Commission's decision approving Verizon Wireless' use of a particular methodology to determine its compliance with Section 310(b)(4) of the Communications Act and prior foreign ownership rulings pertaining to the company. Second, Chatham offers no plausible explanation for its failure to participate in this license transfer proceeding before the Commission decision was made. Its untimely attempt to participate seems to be stimulated by a desire to pursue issues totally unrelated to the transaction in this case.¹ Accordingly, the Commission should dismiss Chatham's Petition for Reconsideration out of hand.

Even setting aside these fatal standing and procedural defects, Chatham's Petition for Reconsideration is meritless – it is deeply flawed in both fact and law. As a factual matter, Chatham fundamentally misunderstands the type of information that Verizon Wireless provided to the Commission to demonstrate compliance with Section 310(b)(4). Verizon Wireless did not

¹ Chatham's Petition is so lacking in merit that it appears to have been filed purely for strategic reasons, in order to create the appearance that this proceeding is open so that Chatham can argue in another docket that this proceeding is not final and should not be relied upon. *See* Chatham Avalon Park Community Council, Reply to Joint Opposition to Petition to Deny, WT Docket No. 08-95, at 12 (filed Aug. 26, 2008). The Commission should not hesitate to dismiss or deny Chatham's petition.

rely on street name information. Rather, Verizon Wireless provided information regarding the address of record of the beneficial owners of its parent companies' shares, which was obtained from independent, third party securities processing and investor communications companies – a method more likely to yield accurate citizenship information than a survey of only a small portion of the companies' shares. Chatham's legal position fares no better. Contrary to Chatham's argument otherwise, applicable law demonstrates that the *Order's* acceptance of the methodology used by Verizon Wireless is consistent with Commission precedent. Thus, even if Chatham's Petition for Reconsideration is not dismissed outright, it should be denied because it lacks merit.

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Pursuant to 47 C.F.R. § 1.106(g), Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) hereby opposes the Petition for Reconsideration filed by Chatham Avalon Park Community Council (“Chatham”) in the above-referenced docket.² As detailed herein, Chatham's Petition for Reconsideration is both procedurally and substantively flawed. Verizon Wireless respectfully requests that the Commission dismiss or deny the Petition and wholly affirm its *Order* granting the applications of Verizon Wireless and Rural Cellular Corporation (“RCC”).³

² Chatham Avalon Park Community Council, Petition for Reconsideration, WT Docket No. 07-208 (filed Aug. 15, 2008) (“Petition for Reconsideration”).

³ *Applications of Cellco P’ship d/b/a Verizon Wireless & Rural Cellular Corp. for Consent to Transfer Control of Licenses, Authorizations, & Spectrum Manager Leases*, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-181, WT Docket No. 07-208 (rel. Aug. 1, 2008) (“*Order*”).

I. CHATHAM LACKS STANDING TO MAINTAIN ITS PETITION FOR RECONSIDERATION OF THE COMMISSION’S ORDER.

The Communications Act and the Commission’s rules both make clear that a party must have standing to file a petition for reconsideration of a Commission order.⁴ Under Commission precedent, Chatham must satisfy the requisites of Article III standing to show that its interests are adversely affected.⁵ Chatham must prove that it has or will suffer cognizable injury-in-fact, that “the injury is fairly traceable to the challenged action,” and that it is redressable by the relief requested.⁶ Further, where the petitioner is an association, it bears the burden to show that at least one of its members meets these requirements.⁷ In addition, as Chatham itself admits,⁸ it is not a “party” to this proceeding because it did not participate prior to the issuance of the *Order*. Chatham must therefore articulate its basis for standing with “particularity.”⁹

Chatham has failed to meet these requirements for standing. Chatham states only that it “is a community based organization located in and around Chicago, Illinois, with hundreds of members who are consumers of telecommunications services, some of which are offered by

⁴ Section 405(a) of the Communications Act permits only a “party” to a Commission proceeding “or any other *person aggrieved or whose interests are adversely affected*” by the Commission proceeding to petition for reconsideration. 47 U.S.C. § 405(a) (emphasis added). Similarly, Section 1.106(b) of the Commission’s rules provides that only a “party” to the proceeding or a person “whose interests are *adversely affected*” by Commission action may petition for reconsideration of that action. 47 C.F.R. § 1.106(b) (emphasis added).

⁵ See *AT&T Corp. v. Bus. Telecom, Inc.*, 16 FCC Rcd 21750, 21752 (¶ 7) (2001).

⁶ See *id.*; see also *Application of Trans Video Commc’ns, Inc.*, 19 FCC Rcd 18644, 18646 (¶ 6) (2004); *Weblink Wireless, Inc.*, 17 FCC Rcd 24642, 24647 (¶ 11) (WTB 2002).

⁷ See *Applications of Knox Broad., Inc.*, 12 FCC Rcd 3337, 3338 (¶ 4) (1997).

⁸ See *Petition for Reconsideration* at 3-4.

⁹ See 47 C.F.R. § 1.106(b); see also, e.g., *Regionet Wireless License*, 17 FCC Rcd 21269, 21271 (¶ 9) (2002)

Verizon Wireless,” and that its interest here is its “particular concern[]” that “large entities have access to sources of capital that are unavailable to smaller businesses and socially disadvantaged businesses that seek to compete with them.”¹⁰ Chatham claims that it has been harmed by the Commission’s decision to give Verizon Wireless “special treatment” by permitting Verizon Wireless to demonstrate its compliance with the foreign ownership restrictions of Section 310(b)(4) by relying on “registered addresses.”¹¹

This conclusory recitation of unsupported, general claims is insufficient to demonstrate standing for three reasons. *First*, Chatham has failed to articulate its injury with “particularity” as required under Section 1.1.06(b). Indeed, Chatham has failed to specifically identify its members, much less to explain how any of these members will suffer palpable injury. Chatham is based “in and around” Chicago, Illinois; to the extent that its members are located in Chicago,¹² they reside in an area wholly unaffected by the *Order* because RCC held no spectrum licenses and offered no services in the State of Illinois.¹³ Further, Chatham’s generalized interest in the ability of “socially disadvantaged businesses” to obtain capital does not constitute an injury-in-fact flowing from this transaction.¹⁴

¹⁰ See Petition for Reconsideration at 2.

¹¹ See *id.* at 1.

¹² See *id.* at 2.

¹³ See *Order* at ¶ 8.

¹⁴ *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 & n.1 (1992) (injury-in-fact must be “concrete and particularized,” and to be “particularized, . . . the injury must affect the plaintiff in a personal and individual way”); *Friends of the Earth, Inc. & Forest Conservation Council, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 201, 204 (¶10) (CWD 2002) (finding that petitioners lacked standing where, “[i]n place of specific facts,” they “rel[ie]d on speculative, general allegations” and failed to “show a direct link between the individual antenna structures and how the organization or its members will be aggrieved”).

Second, even assuming Chatham’s generalized interest would suffice as a cognizable interest, any injury to this interest cannot be traced to the Commission’s *Order*. The *Order* approves the transfer of spectrum licenses and authorizations from one wireless provider to another. It does nothing to impede the efforts of small and socially disadvantaged businesses to obtain capital.¹⁵

Third, and finally, any relief that could be granted in response to the Petition for Reconsideration would not redress Chatham’s purported injury. Chatham asks the Commission either (1) to “obtain from Verizon Wireless a statistically valid sample survey establishing the citizenship of” its shareholders for purposes of the Section 310(b)(4) determination, or (2) to permit socially disadvantaged businesses to use the “registered address” methodology to evaluate foreign ownership under Section 310(b) “for all services.”¹⁶ Requiring that Verizon Wireless obtain a statistically valid sample survey establishing its shareholders’ citizenship has nothing to do with increasing access to capital for small and socially disadvantaged businesses.¹⁷ Similarly, it is not clear how Chatham’s alternative requested relief – to extend the “registered address” methodology to license applicants generally – would increase access to capital for small and

¹⁵ If anything, Chatham’s claimed injury is fairly traceable only to the Commission’s decision in a wholly separate and unrelated rulemaking proceeding to reject proposals to liberalize the Commission’s foreign ownership policies. *See Promoting Diversification of Ownership in the Broad. Servs.*, Report and Order and Third Further Notice of Proposed Rule Making, 23 FCC Rcd 5922, 5949 (¶ 77) (rel. Mar. 5, 2008) (hereinafter “*Promoting Diversification of Ownership Order*”), *recon. pending* (rejecting proposal “that the Commission consider relaxing restrictions on foreign ownership to permit non-controlling foreign investment where such investment would help eliminate a barrier to access to capital for domestic, minority-owned broadcasters”). The Commission’s action in that docket clearly has nothing to do with the instant proceeding.

¹⁶ Petition for Reconsideration at 4-5.

¹⁷ *See AT&T Wireless PCS, Inc.*, 15 FCC Rcd 4587, 4589 (¶ 4) (2000) (in petition to deny context, finding denial of license grant “would not redress any injury to [petitioner] because such a denial would merely return the licenses to the Commission”).

socially disadvantaged businesses. However, there is nothing in the FCC's *Order* that would prohibit its use by such firms. Indeed, the *Order* appears to support that end.¹⁸

Failure to prove any one of the requirements for standing would doom Chatham's Petition for Reconsideration. Because Chatham has failed to satisfy any of these requirements, it is without standing to maintain this Petition for Reconsideration.

II. CHATHAM'S FAILURE TO PARTICIPATE PREVIOUSLY IN THIS PROCEEDING IS ALSO FATAL TO CONSIDERATION OF ITS PETITION FOR RECONSIDERATION.

A non-party to a Commission proceeding may not petition for reconsideration of the resulting action unless it shows "good reason" for its failure to participate below.¹⁹ Chatham's explanation for why it failed to participate is wholly inadequate. *First*, Chatham contends that the decision "could not reasonably have been anticipated in view of the Commission's . . . categorical rejection, just months ago, of any liberalization of its foreign ownership policies."²⁰ Chatham's contention that it could not "reasonably . . . anticipate[]" the Commission's decision in light of the Commission's *Promoting Diversification of Ownership Order* is meritless.

As an initial matter, the record in this proceeding clearly *did* provide notice that the Commission would be reviewing Verizon Wireless' foreign ownership and that it would be reviewing the methodology the company used to demonstrate compliance. On September 29,

¹⁸ That the Commission concluded that approval of Verizon Wireless' methodology was warranted because of the "special circumstances" present in the *Order* does not set limits on the types of circumstances that might warrant utilization of this methodology. Moreover, because compliance with the requirements of Section 310(b)(4) is determined on a fact-specific, case-by-case basis, it is properly addressed in a petition for declaratory ruling containing the facts about that particular company and its ownership. Reconsideration of the FCC's decision regarding the Verizon Wireless/RCC transaction is not the appropriate proceeding for that determination.

¹⁹ 47 C.F.R. § 1.106(b).

²⁰ Petition for Reconsideration at 3.

2007, Verizon Wireless filed a request for declaratory ruling under Section 310(b)(4) that it would be in the public interest for the RCC licenses and authorizations to have indirect foreign ownership in excess of the 25 percent benchmark under Section 310(b)(4). The FCC placed that request on public notice.²¹ On April 8, 2008, Verizon Wireless filed a letter with the Commission providing additional detail on this issue. This letter explained specifically how the company was utilizing addresses of record obtained from independent, third-party securities processing and investor communications companies to determine the citizenship of the shareholders of Verizon Communications Inc. (“Verizon”) and Vodafone Group Plc (“Vodafone”).²² It is therefore not surprising that the Commission addressed this issue in its *Order*, accepting the methodology used, concluding that Verizon Wireless was in compliance with its prior Section 310(b)(4) rulings, and extending those rulings to the RCC licenses and authorizations. Chatham’s assertion that it could not have anticipated this development is simply unsupportable.

Moreover, the *Promoting Diversification of Ownership Order*²³ referenced by Chatham is entirely irrelevant to this proceeding. There, the Commission “categorical[ly] reject[ed]”²⁴ a proposal to raise the benchmark for scrutiny under Section 310(b)(4) from 25 percent to 49

²¹ *Verizon Wireless & Rural Cellular Corporation Seek FCC Consent to Transfer Control of Licenses, Spectrum Manager Leases, & Authorizations*, Public Notice, 22 FCC Rcd 18356 (2007).

²² Letter of Nancy J. Victory, Wiley Rein LLP, on behalf of Cellco Partnership d/b/a Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 07-208 (filed Apr. 8, 2008).

²³ *Promoting Diversification of Ownership Order*, 23 FCC Rcd 5922 (2008).

²⁴ Petition for Reconsideration at 3.

percent.²⁵ The use of addresses of record from third party securities processing and investor communications companies to demonstrate citizenship was not at issue. The Commission’s conclusions in that order thus have nothing to do with the issues raised in this proceeding and cannot support Chatham’s contention that the Commission’s acceptance of Verizon Wireless’ methodology for demonstrating Section 310(b)(4) compliance was unexpected.

Second, Chatham states that “the public interest would be served by addressing the related Section 310(b) issues in a unified fashion.”²⁶ Chatham’s public interest appeal does not constitute a “reason” – much less a “good reason” – for its failure to participate in this proceeding before the Commission issued its Order. Indeed, given that the Section 310(b)(4) analysis is a fact-specific, case-by-case assessment, it is hard to perceive how a unified review would provide much guidance on this issue. Accordingly, Chatham has failed to demonstrate “good reason” for its failure to participate. Even setting aside its lack of standing, Chatham’s Petition for Reconsideration should be dismissed.

III. CHATHAM’S PETITION FOR RECONSIDERATION IS MERITLESS.

Chatham’s substantive argument that the Commission should reconsider its decision to accept Verizon Wireless’ methodology for demonstrating compliance with Section 310(b)(4)’s foreign ownership limitation is also without merit. Indeed, it is both factually and legally flawed.

As a factual matter, to the extent that Chatham attempts to discredit Verizon Wireless’ methodology by characterizing it as relying on street name information, Chatham is simply wrong. Chatham fundamentally misunderstands the data that Verizon Wireless provided to the Commission. Verizon Wireless did not rely on “the addresses of custodian banks and brokers

²⁵ See *Promoting Diversification of Ownership Order*, 23 FCC Rcd at 5949 (¶ 77).

²⁶ Petition for Reconsideration at 4.

that hold shares for . . . owners that have chosen not to possess stock certificates” – data Chatham notes has previously been rejected by the Commission as insufficient.²⁷ Rather, Verizon Wireless provided the Commission with “aggregate information regarding the addresses of record of the beneficial owners” of Verizon and Vodafone stock.²⁸ This information was collected by independent, third-party securities processing and investor communications companies for purposes of delivering shareholder communications and voting materials to these beneficial owners. Since this information was gathered by independent third parties,²⁹ it is trustworthy data that could not have been manipulated for purposes of complying with Section 310(b)(4). Further, since this data reflects the address at which each beneficial shareholder of Verizon Wireless’ parent companies receives important investor information and shareholder voting materials, it is highly likely to conform to their country of residence and of citizenship. As Verizon Wireless explained when it submitted this information, because this information is comprehensive and comes from trustworthy sources, it is “more likely to yield accurate citizenship information than a citizenship survey of only a small portion of a company’s shares – one option the International Bureau has noted might be used to determine a publicly traded company’s foreign ownership for purposes of Section 310(b).”³⁰

²⁷ See *Verizon Communications Inc. and América Móvil, S.A. de C.V.*, Memorandum Opinion and Order, 22 FCC Rcd 6195, 6223 (¶ 59) (2007).

²⁸ Letter of Nancy J. Victory, Wiley Rein LLP, on behalf of Cellco Partnership d/b/a Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 07-208, at 2-4 (filed Apr. 8, 2008).

²⁹ In the case of the Verizon shares held in street name, the information was obtained by Broadridge Financial Solutions, a firm that collects and maintains this information in the ordinary course for the purpose of sending proxy and other information to beneficial owners of Verizon shares. *Id.* at 4. Similarly, the Vodafone information was obtained by UBS AG, an investment banking and securities firm that is one of the largest global asset managers. *Id.* at 2.

³⁰ *Id.* at 3 n.5.

Moreover, as a legal matter, Chatham’s argument that the “Commission has expressly, definitely, and consistently rejected” this methodology “for everyone but Verizon Wireless”³¹ is demonstrably false. The decision here is consistent with Commission precedent. Indeed, in 2006, the Commission’s International Bureau approved a similar approach for determining the citizenship of a publicly traded company’s shareholders. In that proceeding involving the transfer of control of Mobile Satellite Ventures Subsidiary,³² Skyterra and Motient determined the citizenship of the owners of shares held in street name by relying on information obtained from a neutral third party providing securities-related services.³³ There, the third party polled brokers holding street name shares and, without identifying the beneficial owners of the shares by name, the brokers indicated how many of the public shares were associated with beneficial owners with foreign addresses.³⁴ In granting the parties’ application for transfer of control, the International Bureau found this technique acceptable when calculating foreign ownership interests.³⁵ More recently, the Commission itself endorsed the methodology by granting a

³¹ Petition for Reconsideration at 3.

³² See *Petition for Declaratory Ruling of Mobile Satellite Ventures Subsidiary LLC*, File No. ISP-PDR-20070314-00004, at 13, n.41 & 14, n.44 (filed Mar. 14, 2007); see also *In the Matter of Mobile Satellite Ventures Subsidiary LLC and SkyTerra Commc’ns, Inc.*, Order and Declaratory Ruling, FCC 08-77 (Mar. 7, 2008).

³³ Letter from Tom W. Davidson, Counsel for Skyterra, and Henry Goldberg, Counsel for Motient, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-106 at 5, 9-10 (filed Aug. 22, 2006).

³⁴ See *id.* at 5.

³⁵ See *Matter of Motient Corp. and Subsidiaries, Transferors, and SkyTerra Commc’ns, Inc., Transferees, Application for Authority to Transfer Control of Mobile Satellite Ventures Subsidiary, LLC*, Memorandum Opinion and Order and Declaratory Ruling, 21 FCC Rcd 10198, 10204 (¶ 14 & n.41) (IB 2006) (noting that the parties’ August 22nd letter explaining the methodology has “been incorporated into the record on review”).

related Section 310(b)(4) declaratory ruling that was based on the same approach.³⁶ Thus, the Commission's decision to accept Verizon Wireless's methodology for demonstrating compliance with Section 310(b)(4) is consistent with Commission precedent.

IV. CONCLUSION

For the foregoing reasons, Verizon Wireless respectfully requests that the Commission dismiss or deny Chatham's Petition for Reconsideration, and wholly affirm its *Order* granting the applications of Verizon Wireless and RCC.

Respectfully submitted,

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³⁶ See *Petition for Declaratory Ruling of Mobile Satellite Ventures Subsidiary LLC*, File No. ISP-PDR-20070314-00004, at 14 n.44 (filed Mar. 14, 2007) (referencing the parties' August 22nd letter from the application proceeding to provide "information regarding Motient's specific foreign ownership calculations"); *Mobile Satellite Ventures Subsidiary LLC & SkyTerra Commc'ns, Inc.*, Order and Declaratory Ruling, FCC 08-77 (Mar. 7, 2008).

CERTIFICATE OF SERVICE

I, Patricia Destajo, certify that on this 28th day of August, 2008, copies of the foregoing were sent to the following parties:

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