

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

In re Applications of
Vodafone AirTouch, Plc and Bell Atlantic Corporation
Platte River Cellular Limited Partnership
Colorado 7 – Saguache Limited Partnership
San Isabel Cellular of Colorado Limited Partnership
Wyoming 1 – Park Limited Partnership
For Consent to Transfer of Control or Assignment of Licenses and Authorizations
File Nos. 0000032969, et al.
File No. 0000033002
File No. 0000033053
File No. 0000033084
File No. 0000033037

ORDER ON FURTHER RECONSIDERATION

Adopted: April 25, 2003

Released: April 28, 2003

By the Chief, Wireless Telecommunications Bureau:

1. We have before us a self-styled Second Petition for Further Reconsideration (“Second Further Petition”) filed by Platte River Cellular Limited Partnership and its general partner Platte River Cellular, Inc., Colorado 7 – Saguache Limited Partnership and its general partner Sand Dunes Cellular, Inc., San Isabel Cellular of Colorado Limited Partnership and its general partner San Isabel Cellular Inc., and Wyoming 1 – Park Limited Partnership and its general partner Yellowstone Cellular, Inc. (collectively, “Cellular Clients”),¹ and Timothy E. Welch, Esq. (together with Cellular Clients, “Petitioners”).² The issues raised in the Second Further Petition originate from a self-styled complaint filed by Mr. Welch³ during the Commission’s consideration of the transfer of control and assignment of licenses from Vodafone AirTouch Plc (“Vodafone”) to Bell Atlantic Corporation (“Bell Atlantic”) (collectively, the “Vodafone – Bell Atlantic proceeding”).⁴ The instant petition specifically requests

1 Although the instant petition was filed, in part, by the Cellular Clients, we note that they did not participate in the early stages of this proceeding. Because we deny the instant petition on other grounds, we need not address whether the Cellular Clients are entitled to file it. See infra note 13 (discussing earlier request by the Cellular Clients to join in this proceeding).

2 See Second Petition for Further Reconsideration, filed July 15, 2002 by Cellular Clients and Timothy E. Welch. No response to the Second Further Petition was filed. The specific grants that Petitioners challenge pertain to FCC Universal Licensing System (“ULS”) File Nos. 0000033002, 0000033053, 0000033084, and 0000033037.

3 Complaint and Request for Investigation of Witness Tampering and Obstruction of Justice and Request for Referral and to the DOJ for Criminal Investigation and Request for a Protective Order and Request for Confidentiality, filed December 15, 1999, by Timothy E. Welch (“Complaint”).

4 See In re Applications of Vodafone AirTouch, Plc and Bell Atlantic Corp., Memorandum Opinion and Order, 15 FCC Rcd 16507 (WTB/IB 2000) (“MO&O”) (consenting to the transfer of control and assignment of

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reconsideration of the Wireless Telecommunications Bureau's ("Bureau") June 13, 2002 Order on Further Reconsideration ("*Order on Further Reconsideration*"),⁵ which denied the Petitioners' March 16, 2002 Petition for Further Reconsideration ("First Further Petition").⁶ For the reasons explained below, we dismiss the Second Further Petition.

2. Mr. Welch represents the Cellular Clients, who have made claims to certain licenses that were part of the Vodafone – Bell Atlantic proceeding.⁷ During that proceeding, Mr. Welch asserted in his Complaint that he was effectively prohibited by alleged misconduct of Vodafone's counsel from filing an opposition to the transfer of control/assignment of those licenses.⁸

3. In the *MO&O* that granted the Vodafone – Bell Atlantic applications, the Bureau, together with the International Bureau, determined that Mr. Welch's Complaint had no merit and, accordingly, denied the Complaint.⁹ Mr. Welch filed a petition for reconsideration ("Reconsideration Petition"), arguing that the *MO&O* failed to adequately address the merits of the Complaint.¹⁰ In the *Order on Reconsideration*, we noted that the allegations made in the Complaint had not presented "a *prima facie* case of misconduct that needed to be explored further before granting the [Vodafone-Bell Atlantic] applications," and that, therefore, the Complaint did not have decisional relevance for resolving the transfer of control and assignment issues raised in the Vodafone – Bell Atlantic proceeding.¹¹ Therefore, we concluded that the treatment of Mr. Welch's submission in the *MO&O* was adequate and denied the Reconsideration Petition.¹²

4. Mr. Welch, along with the Cellular Clients, then filed the First Further Petition.¹³ The Petitioners argued that our decision in the *Order on Reconsideration* was based on a different rationale than the *MO&O* and failed to provide any reasoning supporting the denial.¹⁴ We found that the First

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licenses from Vodafone to Bell Atlantic). After the transaction was consummated, Bell Atlantic became Verizon Communications, Inc.

⁵ In re Applications of Vodafone AirTouch, Plc and Bell Atlantic Corp., *Order on Further Reconsideration*, 17 FCC Rcd 10998 (WTB 2002).

⁶ The First Further Petition sought reconsideration of our February 14, 2001 Order on Reconsideration. See In re Applications of Vodafone AirTouch, Plc and Bell Atlantic Corp., *Order on Reconsideration*, 16 FCC Rcd 3180 (WTB 2001) ("*Order on Reconsideration*"). The *Order on Reconsideration* denied Mr. Welch's May 1, 2000 Petition for Reconsideration ("Reconsideration Petition"), which had sought reconsideration of the decision in the *MO&O* to deny Mr. Welch's Complaint. See *MO&O*, 15 FCC Rcd at 16511 n.17.

⁷ For a list of these licenses, see ULS File Nos. 0000033002, 0000033053, 0000033084 and 0000033037.

⁸ Reconsideration Petition at 2-3.

⁹ *MO&O*, 15 FCC Rcd at 16511 n.17.

¹⁰ Reconsideration Petition at 1.

¹¹ *Order on Reconsideration*, 16 FCC Rcd at 3181.

¹² *Id.* at 3180-81.

¹³ The First Further Petition sought to join the Cellular Clients in this proceeding. The *Order on Further Reconsideration* noted that, as it was denying the First Further Petition on the merits, it need not address separately the request to join the Cellular Clients. *Order on Further Reconsideration*, 17 FCC Rcd at 10998 n.1. The instant petition does not seek reconsideration of that determination and offers no explanation why the Cellular Clients should be permitted to join the proceeding at this late stage. Accordingly, and in view of our dismissal of the Second Further Petition on other grounds, we do not address whether the Cellular Clients may participate in this proceeding.

¹⁴ *Id.* at 10999.

Further Petition failed to provide any “new facts or arguments that compel reconsideration of [the *MO&O* and *Order on Reconsideration*]” and denied the First Further Petition.¹⁵

5. The Petitioners then filed the Second Further Petition. The Petitioners justify filing a third petition for reconsideration based on the fact that, six days after they filed the First Further Petition, the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) issued a Judgment¹⁶ that the Petitioners allege is relevant to the Commission’s consideration of the Vodafone – Bell Atlantic transfer of control/assignment applications.¹⁷ Specifically, the Petitioners claim that the Judgment “finds that the transferors in that case, a case which involves the same licenses at issue instantly, do not ‘enjoy either *de jure* or *de facto* control over the licenses at issue.’”¹⁸ Petitioners argue that Vodafone’s predecessor-in-interest for the subject licenses, CommNet Cellular, Inc. (“CommNet”), accordingly did not possess “substantial control” over the limited partnerships that held the licenses and that therefore neither CommNet nor its successors had authority to transfer the licenses.¹⁹

6. We find that the Judgment provides no basis either for filing a petition for reconsideration under the Commission’s rules or for reconsidering our earlier consent to the transfer of the licenses from Vodafone to Bell Atlantic. The Petitioners’ claim that the Judgment finds that Vodafone/CommNet did not exercise substantial control over the licenses²⁰ is based on a selective quotation that misrepresents what the D.C. Circuit actually said. Specifically, the court first quoted language from the Commission decision at issue in the Judgment that the Commission’s approval of the transfer of CommNet’s interest in the licenses “‘did not change the nature or level of CommNet’s interest in the licenses or in any way affect [the Cellular Clients’] rights in those same licenses.’”²¹ The court then added that “[n]or, contrary to [the Cellular Clients’] assertion, does [Pueblo MSA] endorse the view that CommNet or its successors in interest enjoy either *de jure* or *de facto* control over the licenses at issue.”²² By omitting the court’s language shown in italics in the immediately preceding sentence, the Petitioners assert that the D.C. Circuit’s Judgment compels a conclusion that the previously-consented transfers of the licenses were not authorized. As the court’s actual language demonstrates, the Petitioners’ claim is totally without foundation. Accordingly, the D.C. Circuit’s issuance of the Judgment does not provide Petitioners any

¹⁵ *Id.* at 10999, 11001.

¹⁶ *Platte River Cellular Limited Partnership v. FCC*, Judgment, 6 Fed.Appx. 8, 2001 WL 418028 (D.C. Cir. 2001) (“Judgment”).

¹⁷ Second Further Petition at 1. The Petitioners make no attempt to explain why they failed to seek to supplement their First Further Petition at the time that the Judgment was issued and instead waited nearly 16 months to seek to introduce it into this proceeding. By this delay, the Petitioners have needlessly denied the Bureau the opportunity to address the Judgment during the pendency of the First Further Petition and thereby added an administrative burden to staff through having to address yet another pleading. As we dismiss the Second Further Petition, however, we will not consider this point further.

¹⁸ *Id.* at 1 (quoting Judgment).

¹⁹ *Id.* at 2. CommNet transferred the licenses to Blackstone CCI Capital Partners, L.P., which in turn later transferred the licenses to Vodafone. See BCP CommNet, L.P., *Memorandum Opinion and Order*, 15 FCC Rcd 28 (WTB 1999).

²⁰ Second Further Reconsideration Petition at 2.

²¹ Judgment (citing Pueblo MSA Limited Partnership *et al.*, *Memorandum Opinion and Order*, 15 FCC Rcd 5439, 5441 (2000) (“*Pueblo MSA*”).

²² Judgment (emphasis added). The D.C. Circuit then found that, because the Cellular Clients asserted no injury traceable to the Commission actions that the court could redress, the Cellular Clients lacked standing to challenge the order under Article III of the Constitution of the United States. *Id.* (citing *Suncom Mobile & Data, Inc. v. FCC*, 87 F.3d 1386, 1387 (D.C. Cir. 1996)).

basis for the instant filing under the Commission's rules, and we therefore dismiss the Second Further Petition.

7. Given that Petitioners offer no other justification for filing a third petition for reconsideration than the D.C. Circuit's issuance of the Judgment, we need not consider their other arguments in the Second Further Petition that purport to show CommNet's lack of control over the partnerships that originally held the licenses at issue. In any event, we would not entertain those arguments at this stage of the proceeding even if Petitioners had a legitimate procedural basis for filing the Second Further Petition. To the extent that these arguments repeat assertions made by Mr. Welch and the Cellular Clients in prior pleadings, they do not constitute grounds for reconsideration, but rather constitute grounds for dismissal. As we clearly stated in both previous reconsideration orders in this matter,²³ the Commission's rules do not allow reconsideration requests for the purpose of allowing a petitioner to reiterate arguments already presented.²⁴ This is particularly true where a petitioner advances arguments that the Commission considered and rejected in a prior order.²⁵ If this were not the case, the Commission "would be involved in a never ending process of review that would frustrate the Commission's ability to conduct its business in an orderly fashion."²⁶ Moreover, unless a petition for reconsideration of an order which has been previously denied on reconsideration is based on new evidence or changed circumstances or reconsideration is in the public interest,²⁷ the Commission staff may, pursuant to section 1.106(k)(2), dismiss the petition for reconsideration.²⁸ The arguments about the control of the partnerships clearly do not rely on new facts not known or not existing at earlier stages of this proceeding, and the Petitioners do not attempt to claim otherwise. Furthermore, as we pointed out in the *Order on Further Reconsideration*, to the extent that the Cellular Clients had private contractual disputes with CommNet over who controlled the partnerships, their appropriate remedy was pursuing those claims in civil litigation.²⁹

8. In sum, for the reasons discussed above, the Petitioners present neither procedural nor substantive grounds for reconsidering any of our prior determinations in this matter, and accordingly, we dismiss the Second Further Petition.

²³ See *Order on Reconsideration*, 16 FCC Rcd at 3180-81; *Order on Further Reconsideration*, 17 FCC Rcd at 10999 (both citing LMDS Communications, Inc., *Order on Reconsideration*, 15 FCC Rcd 23747, 23749 (WTB 2000) ("LMDS Communications")).

²⁴ Policies Regarding the Detrimental Effects of Proposed New Broadcasting Stations on Existing Stations, MM Docket. No. 87-68, *Memorandum Opinion and Order*, 4 FCC Rcd 2276, 2277 (1989) ("It is well established that reconsideration will not be granted merely for the purpose of again debating matter on which the agency has once deliberated and spoken. The public interest in expeditious resolution of Commission proceedings is done a disservice if the Commission readdresses arguments and issues it has already considered."); Simplification of the Licensing and Call Sign Assignment Systems for Stations in the Amateur Radio Service, *Memorandum Opinion and Order*, 87 FCC.2d 50, 505 (1981) (citing *WWIZ, Inc.*, 37 FCC 685 (1964)).

²⁵ See Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Third Order on Reconsideration of the Report and Order and Memorandum Opinion and Order*, 17 FCC Rcd. 8520, 8525, ¶ 15 (2002) ("218-219 MHz Order") (citing 47 C.F.R. § 1.429 (procedures for filing petition for reconsideration in a rulemaking context)).

²⁶ Applications of Warren Price Communications, Inc. Bay Shore, New York, *et al.*, For a Construction Permit for a New FM Station on Channel 276 at Bay Shore, New York, *Memorandum Opinion and Order*, 7 FCC Rcd 6850, n.1 (1992) (quoting *VHF Drop-ins*, 3 RR 2d 1549, 1551 n.3 (1964)) (stating that a second petition for reconsideration is not contemplated by the rules and may be dismissed as repetitious).

²⁷ See, e.g., *218-219 MHz Order*.

²⁸ 47 C.F.R. § 1.106(k)(2).

²⁹ *Order on Further Reconsideration*, 17 FCC Rcd at 11000 (citing *Pueblo MSA*, 15 FCC Rcd at 5441).

9. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and sections 0.331 and 1.106 of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.106, the Second Petition for Further Reconsideration filed by Platte River Cellular Limited Partnership and its general partner Platte River Cellular, Inc., Colorado 7 – Saguache Limited Partnership and its general partner Sand Dunes Cellular, Inc., San Isabel Cellular of Colorado Limited Partnership and its general partner San Isabel Cellular Inc., Wyoming 1 – Park Limited Partnership and its general partner Yellowstone Cellular, Inc., and Timothy E. Welch, Esq. on July 15, 2002 IS HEREBY DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

John B. Muleta, Chief
Wireless Telecommunications Bureau