



BEFORE THE ARIZONA CORPORATION COMMISSION

BOB STUMP
Chairman
GARY PIERCE
Commissioner
BRENDA BURNS
Commissioner
BOB BURNS
Commissioner
SUSAN BITTER SMITH
Commissioner

Arizona Corporation Commission

DOCKETED

FEB 20 2013

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IN THE MATTER OF THE APPLICATION } DOCKET NOS. T-20598A-12-0488
OF CELLCO PARTNERSHIP D/B/A }
VERIZON WIRELESS FOR A FINDING OF }
NO JURISDICTION, OR, IN THE }
ALTERNATIVE, A WAIVER OF THE } DECISION NO. 73727
AFFILIATED RULES PURSUANT TO AAC } ORDER
R14-2-806, OR, IN THE ALTERNATIVE, }
APPROVAL PURSUANT TO AAC R14-2- }
803 }

Open Meeting
February 12 and 13, 2013
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

Introduction

1. On December 6, 2012, Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless") filed an application in relation to a proposed transaction by which Mohave Cellular Limited Partnership ("Mohave") will become a wholly-owned subsidiary of Verizon Wireless (the "Transaction").

2. Verizon Wireless seeks a finding of no jurisdiction, or, in the alternative, if the Commission finds it does have jurisdiction, a limited waiver of the Affiliated Interests Rules, Arizona Administrative Code ("A.A.C") R14-2-801 *et seq*, or, in the alternative, grant this application in an expedited fashion pursuant to A.A.C. R14-2-803.

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3. Staff is recommending a limited waiver of the Affiliated Interest Rules for this transaction and prospective transactions involving Verizon Wireless and its subsidiaries as set forth below.

Background

4. Subsidiaries of Verizon Wireless, which is a joint venture ultimately owned 55 percent by Verizon Communications, Inc. and 45 percent by the Vodafone Group plc. are licensed by the Federal Communications Commission to provide service throughout Arizona. Five operating subsidiaries of Verizon Wireless currently provide service to Arizona customers: Verizon Wireless (VAW) LLC (a limited partner of Mohave), Gila River Cellular General Partnership, Alltel Communications, LLC, WWC License LLC, and Alltel Communications Southwest Holdings, Inc. All entities are wholly-owned subsidiaries of Cellco Partnership, except for Gila River Cellular General Partnership which is majority-owned subsidiary of Cellco Partnership.

5. In Arizona, Verizon Wireless has more than 2,400 employees, which include those working at its Southwest Region headquarters and customer service center located in Chandler. In 2011, Verizon Wireless invested approximately \$120 million in Arizona and has invested more than \$1.1 billion since 2000. Verizon Wireless states that the investment has included new cell sites and capacity enhancements, which have brought improved coverage, call quality and network reliability, enabling customers to accomplish more through wireless means and helping to enable new services such as 4G LTE Broadband Access, and VZ Navigator(SM).

Other Parties to the Transaction

6. CU Wireless, LLC d/b/a Citizens Mohave Cellular Company ("Citizens") is currently the general partner of Mohave. Citizens is owned and controlled by Frontier Communications Corporation ("Frontier"). In addition to Mohave, Frontier operating subsidiaries, Citizens Telecommunications Company of the White Mountains, Inc., Citizens Utilities Rural Company, Inc., Frontier Communications of the Southwest Inc., Navajo Communications Company, Inc. and Frontier Communications of America, Inc., provide telecommunications services to customers in Arizona.

7. Rio Virgin Cellular, Inc. ("Rio Cellular") is currently the other limited partner of Mohave. Rio Cellular's affiliate, Rio Virgin Telephone Company, provides service to customers in a limited territory in northwest Arizona.

The Transaction

8. Citizens, Rio Cellular, and Verizon Wireless (VAW) LLC each own 33.33 percent interest in Mohave. Citizens, the manager of Mohave and Rio Cellular intend to sell their partnership interests to Verizon Wireless. Verizon Wireless (VAW) LLC is a wholly-owned subsidiary of Verizon Wireless.

9. When the Transaction is closed, Verizon Wireless will own 66.66 percent of Mohave Cellular Limited Partnership ("Mohave") and Verizon Wireless (VAW) LLC will own 33.33 percent of Mohave. Mohave will become a wholly owned subsidiary of Verizon Wireless.

10. On January 18, 2013, Verizon Wireless filed with the Commission's Docket Control an affidavit of publication verifying public notice of the proposed purchase of its partnership interest. Verizon Wireless published notice of its application on December 28, 2012, in the *Kingman Daily Miner*, *Mohave Daily News* (Bullhead City), and *Today's News-Herald* (Lake Havasu City).

Transaction Benefits

11. Verizon Wireless stated in its application that it will transition current Mohave customers within a period of 12-15 months after closing the entire transaction. Verizon Wireless also stated that it will transition customers to like or better price plans, to the extent possible, in terms of access and usage allowances; offer replacement handsets, to the extent necessary, for customers to take advantage of the full suite of Verizon Wireless services, including a variety of free and discounted services; and, on a case-by-case basis, waive early termination fees if a customer does not wish to continue service with Verizon Wireless.

12. The proposed Transaction is in the public interest. Verizon Wireless will be able to integrate the Mohave license into its network so that Verizon Wireless is able to deliver enhanced voice, EVDO, and other advanced wireless products to meet increasing demands of its customers

1 for wireless products and services in the Mohave market. Also, Mohave customers will benefit
2 from Verizon Wireless' planned deployment of 4G LTE on its 700 MHz C Block spectrum.

3 13. Competition in the Mohave market will not be adversely affected by the proposed
4 Transaction. AT&T, T-Mobile, and Sprint are competitors in the Mohave market. Because
5 Verizon Wireless will replace Mohave in the market, there is no reduction in the number of
6 competitors and consumers will continue to benefit from competition.

7 **Staff Analysis and Conclusions**

8 14. A.A.C. R14-2-803 provides that any Class A utility or affiliate of a Class A utility
9 intending to organize a public utility holding company or reorganize an existing public utility
10 holding company will notify the Commission's Utilities Division in writing at least 120 days prior
11 thereto. The Commission may hold a hearing and may reject the proposal if it determines that it
12 would impair the financial status of the public utility, otherwise prevent it from attracting capital at
13 fair and reasonable terms, or impair the ability of the utility to provide safe, reasonable and
14 adequate service. Verizon Wireless has provided all of the information required by A.A.C. R14-
15 2-803.

16 15. Verizon Wireless seeks a finding of no jurisdiction; a limited waiver similar to the
17 waivers granted in Decision Nos. 58228, 58978 or 58229; or approval of the transaction. Verizon
18 Wireless argues that under Article 15, Section 3 of the Arizona Constitution, the Commission's
19 authority is strictly limited to setting numeric rates and charges and that the Commission is
20 preempted from regulating wireless rates and entry pursuant to 47 U.S.C. § 332 (c) (3).

21 16. In the alternative, if the Commission finds that it does have jurisdiction, then
22 Verizon Wireless requests that the Commission grant a limited waiver of the Affiliated Interests
23 Rules pursuant to A.A.C. R14-2-806 or, in the alternative, approve the Transaction without a
24 hearing and within 60 days pursuant to A.A.C. R14-2-803. Verizon Wireless seeks a limited
25 waiver similar to that granted in Decision Nos. 58228, 58978 and 58229.

26 17. Verizon Wireless (VAW) LLC and Mohave are public service corporations under
27 Article 15, Section 2 which provides that a "public service corporation" "[is]...[a]ll corporation[s]
28 other than municipal engaged in furnishing gas, oil, or electricity for light, fuel, or power; or in

1 furnishing water for irrigation, fire protection, or other public purposes; or in furnishing, for profit,
2 hot or cold air or steam for heating or cooling purposes; or engaged in collecting, transporting,
3 treating, purifying and disposing of sewage through a system, for profit; **or in transmitting**
4 **messages or furnishing public telegraph or telephone service**, and [a]ll corporation[s] other
5 than municipal, operating as common carriers, ...". [Emphasis added].

6 18. Federal law does not preempt state commission jurisdiction to review transactions
7 of this nature. While the Commission is preempted from regulating the entry and rates of wireless
8 providers at this time under Federal Law, the Commission still has jurisdiction under Federal Law
9 over "other terms and conditions of wireless service." Other terms and conditions include the
10 purchase of partnership interests or transfers of control.

11 19. Since Federal Law defines transfers of control of this nature to be "other terms and
12 conditions" subject to State jurisdiction, they are not encompassed within the rate setting
13 preemption provision of the Federal Act. The Commission's ratemaking authority under Arizona
14 Law also provides for review of transactions of this nature. *See, Woods, supra*. Thus, the
15 Commission's ratemaking authority under State law is broader than merely setting rates and
16 broader than the narrower rate setting preemption under the Federal Act.

17 20. However, Staff believes that Verizon Wireless's request for a limited waiver should
18 be granted for this transaction and prospective transactions requiring review and approval under
19 the Affiliated Interest Rules as set forth below. The Commission may waive compliance with any
20 of the provisions of this Article upon a finding that such waiver is in the public interest. The
21 requested waiver is appropriate because wireless service is not a monopoly service and the
22 Commission is preempted from regulating certain aspects of operations for wireless providers at
23 this time under Federal Law.

24 21. Verizon Wireless seeks a limited waiver similar to the waiver granted in Decisions
25 Nos. 58228, 58978 and 58229. Staff believes that a limited waiver similar to the ones granted in
26 the above Decisions is appropriate in this case. No notices of intent regarding transactions that do
27 not have a material adverse effect on the Arizona utilities' operations will be required. The
28 waiver proposed by Staff is subject to the following conditions:

22. First, Verizon Wireless and its wireless subsidiaries¹ will no longer be required to file a notice of intent to organize or reorganize a public utility holding company under A.A.C. R14-2-803 except for those organizations or reorganizations which are likely to have a material adverse impact on the Arizona public service corporation. A material adverse impact would be significantly increased costs, or impairment of the Arizona public service corporation's ability to provide safe, reasonable and adequate service.

23. Second, Verizon Wireless and its wireless subsidiaries should be required to file annually, on the date that compliance with A.A.C. R14-2-805 (entitled Annual Filing Requirements of Diversification Activities and Plans), would otherwise be required, an affidavit from their General Counsel, or his designee, listing the transactions otherwise subject to A.A.C. R14-2-803 for which no notice of intent was filed by the Verizon Wireless or its wireless subsidiaries. The current service areas for the wireless companies or entities providing service in Arizona should be included in the filing.

24. Third, with respect to A.A.C. R14-2-804, which requires a utility to obtain Commission approval prior to obtaining a financial interest in, lending funds to, or forming or divesting an affiliate, Verizon Wireless and its wireless subsidiaries will be given a complete waiver of A.A.C. R14-2-804 (a) and (b) so long as the Commission continues to be preempted under Federal law from regulating the rates of wireless providers. With respect to A.A.C. R14-2-804(c), Verizon Wireless and its wireless subsidiaries, shall be required to file a "notice" rather than seek Commission "approval" in situations where there is not likely to be a material adverse effect to the Arizona jurisdiction with such a transaction as defined above. The notice should be received by the Commission 14 days prior to consummation of the transaction.

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¹ 1 Verizon Wireless' wireless subsidiaries, after consummation of this transaction, will be Verizon Wireless (VAW), LLC, Gila River Cellular General Partnership, Alltel Communications LLC, WWC License LLC, Alltel Communications Southwest Holdings, Inc., and Mohave Cellular Limited Partnership.

Staff's Recommendations

25. Staff recommends that the Commission grant Cellco Partnership d/b/a Verizon Wireless' application for a limited waiver of the Affiliated Interest Rules subject to the conditions set forth above in Findings of Fact Nos. 22-24.

CONCLUSIONS OF LAW

1. Verizon Wireless LLC and Mohave Cellular Limited Partnership are public service corporations within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over Verizon Wireless LLC and Mohave Cellular Limited Partnership and the subject matter in this filing.

3. Staff's recommendations are reasonable and should be adopted.

4. The application of Cellco Partnership d/b/a Verizon Wireless for a limited waiver of A.A.C. R14-2-803, R14-2-804, and R14-2-805 should be granted subject to Staff's conditions contained in Findings of Fact Nos. 22 -24.

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ORDER

IT IS THEREFORE ORDERED that the request of Cellco Partnership d/b/a Verizon Wireless for a limited waiver of the Affiliated Interest Rules (A.A.C. R14-2-803, R14-2-804, and R14-2-805) be and hereby is granted, subject to the conditions and provisions described in Findings of Fact Nos. 22-24 herein.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION
CHAIRMAN
COMMISSIONER
COMMISSIONER
COMMISSIONER
COMMISSIONER

IN WITNESS WHEREOF, I JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 20th day of February, 2013.


JODI JERICH
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

SMO: JFB:sms/MAS

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