

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

In the Matter of Applications of	)	
	)	
AMERITECH CORPORATION	)	
and SBC COMMUNICATIONS, INC.	)	
	)	File Nos. 0000052981, 0000063348
For Consent to a <i>Pro Forma</i> Transfer of Control	)	
Of Thumb Cellular Limited Partnership	)	
Stations WML231, WML232, KNKQ268, and	)	
WPOI463	)	

**ORDER ON RECONSIDERATION**

**Adopted:** August 28, 2000

**Released:** August 29, 2000

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. We have before us a petition for reconsideration (Petition) filed by Thumb Cellular Limited Partnership (Thumb Cellular) requesting reconsideration of the Bureau’s grants of the above-captioned *pro forma* transfer of control applications.<sup>1</sup> For the reasons set forth below, we dismiss the Petition.

**II. BACKGROUND**

2. SBC Communications Inc. (SBC) acquired control of Ameritech Corporation (Ameritech) on October 8, 1999.<sup>2</sup> Pursuant to this acquisition, on November 8, 1999, SBC/Ameritech applied to transfer control of Ameritech’s interest in Thumb Cellular to SBC. Ameritech believes that it, through a

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<sup>1</sup> Petition for Reconsideration filed by Thumb Cellular on March 20, 2000 (Petition). *See also* Opposition of SBC Communications Inc. to Thumb Cellular Limited Partnership’s Petition for Reconsideration filed by SBC Communications Inc. on April 3, 2000 (Opposition), Reply to Opposition [to] Petition for Reconsideration filed by Thumb Cellular on April 13, 2000 (Reply), Applicants’ Response to Petition to Dismiss or Deny filed June 29, 2000 (Applicants’ Response), and Reply to Applicants’ Response to Petition to Dismiss or Deny filed July 7, 2000.

<sup>2</sup> *See* Applications of Ameritech Corp. and SBC Communications Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 14712 (1999).

subsidiary, owns a 23% interest in Thumb Cellular.<sup>3</sup> Thumb Cellular denies that Ameritech has any interest, and has disputed the matter with Ameritech since at least 1991.<sup>4</sup>

3. The transfer application was filed manually. SBC applied for, and was granted, a waiver of the electronic filing requirement<sup>5</sup> based on its claim that it was unable to obtain the Taxpayer Identification Number (TIN) or Universal Licensing System (ULS) password for Thumb Cellular.<sup>6</sup> For reasons that are unclear, two separate file numbers were assigned to the application: File Number 0000052981, which included Call Signs KNKQ268, WML231, WML232, and WPOI463, and File Number 0000063348, which redundantly covered Call Signs WML231 and WML232. File Number 0000052981 was granted on January 19, 2000,<sup>7</sup> and File Number 0000063348 was granted on February 23, 2000.<sup>8</sup> On March 20, 2000, Thumb Cellular filed its Petition, arguing that Ameritech had no ownership interest in Thumb Cellular that it could transfer to SBC.<sup>9</sup> File Number 0000063348 was dismissed as an unnecessary filing on August 9, 2000.<sup>10</sup> On August 14, 2000, Thumb Cellular requested clarification or reconsideration of the dismissal, because the dismissal notice did not explain the effect of the dismissal on Thumb Cellular's pending Petition.<sup>11</sup> Thumb Cellular requested that the Commission either dismiss File Number 0000052981 as well, or release a written order addressing its Petition.<sup>12</sup>

### III. DISCUSSION

4. We hereby clarify that the August 9, 2000 dismissal of File Number 0000063348 did not resolve Thumb Cellular's Petition. We find, however, that the Petition is untimely. The public notice granting the application (and listing all of the relevant call signs) was released on January 19, 2000. Section 405(a) of the Communications Act, as implemented by Section 1.106(f) of the Commission's Rules, requires a petition for reconsideration to be filed within thirty days of the Commission's action.<sup>13</sup>

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<sup>3</sup> Opposition at 2.

<sup>4</sup> See Letter from Edwin H. Eichler, Agri-Valley Communications, Inc. [general partner of Thumb Cellular] to John Cusack, Ameritech Mobile Communications, Inc., dated August 30, 1991; Letter from John Cusack, Ameritech Mobile Communications, Inc. to Edwin H. Eichler, dated September 16, 1991.

<sup>5</sup> See 47 C.F.R. § 1.913(b).

<sup>6</sup> See Letter from Philip Horton, counsel for SBC, to FCC, dated November 8, 1999.

<sup>7</sup> See Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report No. 437 (rel. January 19, 2000).

<sup>8</sup> See Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report No. 461 (rel. February 23, 2000).

<sup>9</sup> Petition at 2.

<sup>10</sup> See Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report No. 610 (rel. August 9, 2000).

<sup>11</sup> Petition for Clarification or, Alternatively, for Reconsideration filed by Thumb Cellular on August 14, 2000.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> 47 U.S.C. § 405; 47 C.F.R. § 1.106(f).

Thumb Cellular did not file its Petition until March 20, 2000, sixty-one days after the public notice was released.

5. Thumb Cellular first argues that the thirty-day filing period began upon the release of the February 23, 2000 public notice, which included two of the call signs listed on the January 19, 2000 public notice.<sup>14</sup> We disagree. In this regard, we note that in *Crystal Broadcast Partners*,<sup>15</sup> the Commission determined that an application for review was untimely when it was filed in response to a second public notice regarding a licensing action as opposed to the first public notice. The Commission reasoned that the filing deadline for seeking reconsideration of the action was set by the first public notice and not reopened by the second public notice: “A duplicative public notice is without legal effect where the applicant cannot establish detrimental reliance.”<sup>16</sup> Similarly, in *State of Oregon Acting By and Through the State Board of Higher Education*, an application appeared on public notice on December 6, 1989, and again, through staff error, on December 28, 1989.<sup>17</sup> Oregon filed a mutually exclusive application on January 29, 1990.<sup>18</sup> The Commission held that Oregon’s application, filed more than thirty days after the December 6 public notice, was untimely, because “the December 28 cut-off notice was without legal effect.”<sup>19</sup> In light of this precedent, we conclude that the February 23, 2000 public notice in this matter was without legal effect. Thus, the period for seeking reconsideration began with the release of the January 19, 2000 public notice, and closed on February 18, 2000.

6. Nonetheless, Thumb Cellular argues that, as a matter of basic fairness, the Petition, filed March 20, 2000, should be deemed timely.<sup>20</sup> For example, Thumb Cellular states that SBC based its waiver application to file the transfer of control application manually, rather than electronically, on its assertion that SBC was unable to obtain the TIN or ULS password for Thumb Cellular, but SBC did not disclose to the Commission that it never attempted to obtain this information from Thumb Cellular.<sup>21</sup> We find that none of Thumb Cellular’s allegations regarding SBC/Ameritech in any way explains why Thumb Cellular did not and could not have submitted its contentions within thirty days of the release of the January 19, 2000 public notice. Therefore, we find that it has not made a sufficient showing to warrant an

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<sup>14</sup> Petition at 1; Reply at 5-6.

<sup>15</sup> *Crystal Broadcast Partners, Memorandum Opinion and Order*, 11 FCC Rcd 4680 (1996).

<sup>16</sup> *See id.* at 4681 ¶ 9 (citing, e.g., *Florida Institute of Technology v. FCC*, 952 F.2d 549, 553 (D.C. Cir. 1992)).

<sup>17</sup> *State of Oregon Acting By and Through the State Board of Higher Education, Memorandum Opinion and Order*, 11 FCC Rcd 1843, 1843 ¶ 2 (1996).

<sup>18</sup> *Id.* at 1843 ¶ 3.

<sup>19</sup> *Id.* at 1843 ¶ 6.

<sup>20</sup> Reply at 7-10.

<sup>21</sup> *Id.*

exception to the thirty-day filing period for reconsideration petitions.<sup>22</sup> Consequently, we conclude that the Petition should be dismissed as untimely filed.<sup>23</sup>

#### IV. ORDERING CLAUSES

7. 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 Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by Thumb Cellular Limited Partnership on March 20, 2000, IS HEREBY DISMISSED.

8. IT IS FURTHER ORDERED that the petition for clarification or reconsideration filed by Thumb Cellular Limited Partnership on August 14, 2000, IS GRANTED IN PART to the extent indicated herein.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau

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<sup>22</sup> Because the thirty-day filing window is statutory, generally the Commission does not have the general authority to waive or extend the deadline absent "extraordinary" circumstances, such as the Commission's failure to provide proper notice. *See, e.g., Gardner v. FCC*, 530 F.2d 1086, 1091-92 (D.C. Cir. 1976).

<sup>23</sup> To the extent that Thumb Cellular is asking that we address a dispute regarding the ownership of Thumb Cellular regarding state law questions, we conclude, as Thumb Cellular concedes, that the Commission is not the appropriate forum for adjudicating state law issues, such as partnership disputes. Reply at 2; *see, e.g., Clarkliff of San Jose, Inc., Order on Reconsideration*, 15 FCC Rcd 4616, 4617-8 ¶ 5 (WTB PSPWD 2000) (*citing* Policy Regarding Character Qualifications in Broadcast Licensing, *Memorandum Opinion and Order*, 6 FCC Rcd 3448, 3448-9 ¶ 6 (1991)), *recon. pending* (filed April 3, 2000); *Listeners' Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987) (endorsing "the Commission's longstanding policy of refusing to adjudicate private contract law questions"). Moreover, the *pro forma* transfer of control merely transferred whatever interest Ameritech had in Thumb Cellular. If Thumb Cellular is correct in its assertion that Ameritech had no interest in Thumb Cellular, then SBC did not obtain any interest in Thumb Cellular through the transfer. *See Jefferson Radio Company, Inc. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964) (where the Commission had terminated the authority to operate a radio station, there was no authorization susceptible of being assigned).