

**Federal Communications Commission
Washington, D.C. 20554**

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

ORDER ON FURTHER RECONSIDERATION

Adopted: June 12, 2002

Released: June 13, 2002

By the Deputy Chief, Wireless Telecommunications Bureau:

1. We have before us a Petition for Further Reconsideration (“Petition”) filed by Platte River Cellular Limited Partnership, its general partner Sand Dunes Cellular, Inc., San Isabel Cellular of Colorado Limited Partnership, its general partner San Isabel Cellular Inc., 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 Petition requests further reconsideration of a February 14, 2001 Order on Reconsideration (“Order on Reconsideration”),³ which denied Mr. Welch’s Petition for Reconsideration of a March 30, 2000 Memorandum Opinion and Order (“MO&O”).⁴ The MO&O granted consent to the transfer of control or assignment of licenses from Vodafone Airtouch Plc (“Vodafone”) to Bell Atlantic Corporation, now Verizon Communications Inc. The MO&O also denied a self-styled complaint filed by Mr. Welch.⁵ In his Petition for

¹ The Petition seeks to join the Cellular Clients, who did not participate in the earlier stages of this proceeding. As we deny the Petition on the merits, we need not address separately the request to join the Cellular Clients.

² See Petition for Further Reconsideration and Request to Join the Cellular Clients, filed March 16, 2001 by Cellular Clients and Timothy E. Welch. No response to the Petition was filed. The specific grants that Petitioners challenge pertain to FCC Universal Licensing System file numbers 0000033002, 0000033053, 0000033084 and 0000033037.

³ See *In re Applications of Vodafone AirTouch, Plc and Bell Atlantic Corp.*, *Order on Reconsideration*, 16 FCC Rcd 3180 (WTB 2001).

⁴ See *In re Applications of Vodafone AirTouch, Plc and Bell Atlantic Corp.*, *Memorandum Opinion and Order*, 15 FCC Rcd 16,507 (WTB/IB 2000).

⁵ See *id.*; 15 FCC Rcd at 16,511 n.17 (denying Complaint and Request for Investigation of Witness Tampering and Obstruction of Justice and Request for Referral and to the DOJ for Criminal Investigation

Reconsideration, Mr. Welch argued that the MO&O failed to adequately address the merits of his Complaint, particularly claims regarding alleged conduct of Vodafone's counsel.⁶ In the Order on Reconsideration, we concluded that our treatment of Mr. Welch's submission was adequate, and we denied the Petition for Reconsideration. In the Petition for Further Reconsideration, Petitioners argue that the Petition for Reconsideration was improperly denied because the Order on Reconsideration was based on a different rationale than the MO&O and failed to provide any reasoning supporting the denial. For the reasons explained below, we deny the Petition for Further Reconsideration.

2. Reconsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.⁷ A petition for reconsideration that simply reiterates arguments previously considered and rejected will be denied.⁸

3. Petitioners argue that further reconsideration is appropriate because the Order on Reconsideration modifies the earlier MO&O by providing a new legal and factual rationale⁹ and fails to provide sufficient reasoning for its decision.¹⁰ We disagree. In the MO&O, we found that Mr. Welch's self-styled complaint was neither a petition to deny nor a comment upon the proposed transfer application.¹¹ Consistent with this finding, the Order on Reconsideration explained that Mr. Welch's submission "did not have decisional relevance for the issues in the proceeding and did not rise to a level that required further inquiry in the context of this proceeding."¹² The MO&O also determined that "the remaining requests do not have merit and, accordingly, [denied] the Welch request."¹³ Consistent with this determination, the Order on Reconsideration explained that "Mr. Welch's allegations did not present a *prima facie* case of misconduct that needed to be explored further before granting the applications."¹⁴ In short, both the MO&O and the Order on Reconsideration found that the Complaint had no decisional relevance to the transfer applications and that it otherwise lacked merit. The instant Petition provides no new facts or arguments that compel reconsideration of those conclusions.

4. Petitioners again raise the argument that an allegation of abuse of process is a relevant consideration in determining whether the transfer of control applications of Vodafone

and Request for a Protective Order and Request for Confidentiality, filed December 15, 1999, by Timothy E. Welch ("Complaint").

⁶ Petition for Reconsideration, filed May 1, 2000 by Timothy E. Welch, Esq. ("Petition for Reconsideration"), at 1.

⁷ See *LMDS Communications, Inc.*, *Order on Reconsideration*, 15 FCC Rcd 23,747, 23,749 ¶ 6 (WTB 2000) ("*LMDS Communications*"); *WWIZ, Inc.*, 37 FCC 685, 686 (1964) ("*WWIZ, Inc.*"), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); 47 C.F.R. § 1.106.

⁸ See *LMDS Communications*, 15 FCC Rcd at 23,749 ¶ 6; *WWIZ, Inc.*, 37 FCC at 686; 47 C.F.R. § 1.106. We note that Section 1.106 does not authorize the filing of a Petition for Further Reconsideration. See 47 C.F.R. § 1.106. Given our disposition of the instant Petition, however, we need not decide whether it also is dismissible on procedural grounds.

⁹ Petition at 3.

¹⁰ *Id.* at 4.

¹¹ See MO&O, 15 FCC Rcd at 16,511 n.17.

¹² Order on Reconsideration, 16 FCC Rcd at 3181 ¶ 4.

¹³ MO&O, 15 FCC Rcd at 16,511 n.17.

¹⁴ Order on Reconsideration, 16 FCC Rcd at 3181 ¶ 4. See also, e.g., *Mobilemedia Corp.*, *Memorandum Opinion and Order*, 14 FCC Rcd 8017, 8018 ¶ 4 (1999).

and Bell Atlantic should be granted.¹⁵ As explained above, we found in the MO&O and the Order on Reconsideration that the allegations here do not have decisional relevance for the issues in this proceeding and do not rise to a level that requires further inquiry in the context of this proceeding. These allegations in the Petition merely repeat arguments that were previously considered and rejected and, as such, provide no basis for further reconsideration.¹⁶

5. To explain further one of the grounds for our previous determination of lack of relevance, we consider Petitioners' allegations, originally made in the Complaint, that the transfer of control applications granted in the MO&O damaged the Cellular Clients' "contract, statutory and other rights."¹⁷ Underlying this allegation is the claim, first made in the Complaint,¹⁸ that alleged conduct by Vodafone's counsel in an unrelated matter prevented Mr. Welch from filing on behalf of the Cellular Clients a petition to deny the transfer applications that would have alleged that Vodafone did not have authority to transfer certain of the licenses that are at issue here. According to the Complaint, such a challenge to Vodafone's authority would have been based on a dispute over who among previous holders of the licenses had controlling interest to authorize a prior transfer of control from CommNet Cellular, Inc. ("CommNet") to Blackstone CCI Capital Partners, L.P. ("Blackstone").¹⁹ Blackstone later transferred the licenses to Vodafone.²⁰

6. In *Pueblo MSA*, however, the Commission already has determined that this underlying contractual dispute was not a sufficient basis for denying the transfer of control of the subject licenses from CommNet to Blackstone.²¹ Upholding staff's approval of the earlier transfer application, the Commission explained that "approval of the transfer of CommNet's interests to Blackstone was a limited one that did not change the nature or level of CommNet's interest in the licenses or in any way affect Petitioners' rights in those same licenses."²² Accordingly, the Commission pointed out, "to the extent that Petitioners had private contractual disputes with CommNet based on their partnership agreements, Petitioners were not foreclosed by the staff's decision from seeking appropriate remedies through civil litigation."²³ The Commission added that it found the continued attempt to pursue private contractual disputes "through the Commission's assignment and transfer review process to be without foundation or merit."²⁴ As is clear from the Commission's decision in *Pueblo MSA*, the allegations that Mr. Welch would have made had he filed a petition to deny in this proceeding do not provide a basis for denying Vodafone's transfer applications.

¹⁵ See Complaint at 13-15; Petition for Reconsideration at 2-3 (setting forth abuse of process argument).

¹⁶ See *LMDS Communications*, 15 FCC Rcd at 23,749 ¶ 6; *WWIZ, Inc.*, 37 FCC Rcd at 686; 47 C.F.R. § 1.106.

¹⁷ Petition at 7.

¹⁸ Complaint at 4.

¹⁹ See *id.* at 3-4.

²⁰ See BCP CommNet, L.P., *Memorandum Opinion and Order*, 15 FCC Rcd 28 (WTB 1999).

²¹ See *Pueblo MSA Limited Partnership, Memorandum Opinion and Order*, 15 FCC Rcd 5439, 5441 ¶ 4 (2000) ("*Pueblo MSA*"), *appeal dismissed sub nom. Platte River Cellular Limited Partnership v. FCC*, 6 Fed.Appx. 8, 2001 WL 418028 (D.C. Cir. 2001) (per curiam).

²² *Pueblo MSA*, 15 FCC Rcd at 5441 ¶ 4 (footnote omitted). The Petitioners in the *Pueblo MSA* proceeding included several of the Cellular Clients identified in this proceeding. See *id.* at 5439 n.1.

²³ *Id.* at 5441 ¶ 4 (footnote omitted). See *In re Northwest Broadcasting, Inc., Memorandum Opinion and Order*, FCC 97-37, at ¶ 10 (1997), *aff'd sub nom. Montierth v. FCC*, 159 F.3d 636 (D.C. Cir. 1998) (per curiam) (Commission historically and consistently has left questions of private contracts to local courts of appropriate jurisdiction).

²⁴ *Pueblo MSA*, 15 FCC Rcd at 5441 ¶ 4.

7. In sum, the Petition presents no new facts or arguments that would persuade us that further reconsideration is appropriate. Accordingly, we deny the Petition.²⁵

8. 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 Petition for Further Reconsideration filed by Cellular Clients and Mr. Welch on March 16, 2001 IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

James D. Schlichting, Deputy Chief
Wireless Telecommunications Bureau

²⁵ The Petition also requests that the transfer of control applications granted below be designated for hearing. Even were reconsideration considered appropriate, it would not automatically compel a finding that the applications be designated for hearing. In any event, as the Order on Reconsideration specifically noted, "Mr. Welch's allegations did not present a *prima facie* case of misconduct that needed to be explored further before granting the applications." 16 FCC Rcd at 3181 ¶ 4.