

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

In the Matter of)	
)	
Cellco Partnership and)	
American Messaging Services, Inc.)	File No. 0002488164
)	
For Transfer of Control of Nationwide)	
929.8875 LLC)	

ORDER

Adopted: January 31, 2007

Released: January 31, 2007

By the Assistant Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we address the Petition for Reconsideration and Motion for Stay filed by USA Mobility, Inc. (“USA Mobility”) requesting review of the Wireless Telecommunications Bureau’s (“Bureau”) consent to the application seeking consent to the transfer of membership interests in Nationwide 929.8875 LLC (“Nationwide”) from Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) to American Messaging Services, Inc. (“AMSI”).¹ For the reasons discussed herein, we dismiss the Petition for Reconsideration and Motion for Stay.

II. BACKGROUND

2. On February 17, 2006, Verizon Wireless, AMSI, and Nationwide filed an Application seeking consent to the transfer of control of licenses and authorizations held by Nationwide from Verizon Wireless to AMSI.² Specifically, the Application requested approval of the proposed transfer of Verizon Wireless’s interests in Nationwide to AMSI.³ The Application appeared on public notice, which announced a fourteen-day comment period, on March 1, 2006 (“Accepted for Filing Public Notice”).⁴ No petitions to deny or comments were filed in response to the Accepted for Filing Public Notice. The Bureau’s approval

¹ Application of Cellco Partnership and American Messaging Services, Inc. For Transfer of Control of Nationwide 929.8875 LLC, *Petition for Reconsideration*, filed by USA Mobility, Inc. (May 5, 2006) (“Petition for Reconsideration”); Application of Cellco Partnership and American Messaging Services, Inc. For Transfer of Control of Nationwide 929.8875 LLC, *Motion for Stay*, filed by USA Mobility, Inc. (May 5, 2006) (“Motion for Stay”).

² Application to Transfer Control of Licenses Held by Nationwide 929.8875 LLC from Cellco Partnership to American Messaging Services, Inc., File No. 0002488164 (filed Feb. 17, 2006) (“Application”).

³ See Application, Exhibit 1, at 1.

of the Application appeared on public notice on April 5, 2006.⁵ USA Mobility filed the Petition for Reconsideration and Motion for Stay on May 5, 2006. In response, Verizon Wireless and AMSI filed a Joint Opposition to Petition for Reconsideration and a Joint Opposition to Motion to Stay, dated May 12, 2006,⁶ to which USA Mobility filed a Reply to Joint Opposition to Petition to Reconsideration on May 25, 2006.⁷

3. In the Petition for Reconsideration, USA Mobility requests that the Commission reconsider its approval of the application because it asserts that Verizon Wireless did not have authority to sign or file the Application.⁸ Specifically, USA Mobility states that USA Mobility and Verizon Wireless each own fifty percent of the membership interests and have negative control of Nationwide, pursuant to a Limited Liability Company Agreement (“LLC Agreement”) and Joint Operating and Management Agreement (“JOM Agreement”).⁹ USA Mobility states that these agreements prohibit one member from transferring part or all of its membership interests in Nationwide without the other member’s consent.¹⁰ USA Mobility further alleges that Verizon Wireless did not request USA Mobility’s consent until the day after the Commission granted the Application.¹¹ USA Mobility states that it subsequently advised Verizon Wireless that it does not consent to the transfer of Verizon Wireless’s membership interests in Nationwide to AMSI.¹² USA Mobility ultimately alleges that, because it did not approve of the transfer of Verizon Wireless’s membership interests to AMSI, Verizon Wireless lacked authority to transfer its interests in

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⁴ Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications Accepted for Filing, *Public Notice*, Report No. 2420 (rel. Mar. 1, 2006).

⁵ Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications Action, *Public Notice*, Report No. 2460 (rel. Apr. 5, 2006).

⁶ Application of Cellco Partnership and American Messaging Services, Inc. For Transfer of Control of Nationwide 929.8875 LLC, *Joint Opposition to Petition for Reconsideration*, filed by Cellco Partnership d/b/a Verizon Wireless and American Messaging Services, Inc. (May 15, 2006) (“Joint Opposition”); Application of Cellco Partnership and American Messaging Services, Inc. For Transfer of Control of Nationwide 929.8875 LLC, *Joint Opposition to Motion for Stay*, filed by Cellco Partnership d/b/a Verizon Wireless and American Messaging Services, Inc. (May 15, 2006).

⁷ Application of Cellco Partnership and American Messaging Services, Inc. For Transfer of Control of Nationwide 929.8875 LLC, *Reply to Joint Opposition to Petition for Reconsideration*, filed by USA Mobility, Inc. (May 25, 2006) (“Reply”)

⁸ See Petition for Reconsideration at 2, 5.

⁹ See *id.* at 2.

¹⁰ See *id.* at 2-3. USA Mobility states that “[t]he LLC Agreement further provides that transfers of a member’s interest without the consent of the other members are void and of no effect, and prohibits the admission of new members of the resignation of members without the written approval of the other members.” *Id.* at 3.

¹¹ See *id.* at 2, 4.

¹² See *id.*; Reply at 6.

Nationwide and to sign and file the Application;¹³ therefore, it claims that the Application is procedurally defective.¹⁴

4. USA Mobility also filed a Motion for Stay contemporaneously with the filing of the Petition for Reconsideration. In the Motion for Stay, which raises many of the same issues as the Petition of Reconsideration, USA Mobility requests that the Commission stay the effectiveness of the April 5, 2006 grant pending review of the Petition for Reconsideration.¹⁵ It requests the stay out of concern that Verizon Wireless may seek to transfer its membership interests in Nationwide to AMSI during the pendency of the Petition for Reconsideration.¹⁶

5. Verizon Wireless and AMSI argue, in the Joint Opposition, that the Petition for Reconsideration was untimely filed without explanation and lacked adequate demonstration of injury.¹⁷ Substantively, they argue that neither the LLC Agreement nor the JOM Agreement precludes Verizon Wireless from making filings on its own behalf that are limited only to its membership interests in Nationwide.¹⁸ They further argue that the application did not effectuate the transfer and, therefore, “[t]he question of whether Verizon Wireless needs to secure USA Mobility’s consent to such transfer . . . is not relevant either to Verizon Wireless’s authority to file the transfer application” or to the Commission’s approval of the application.¹⁹

III. DISCUSSION

6. We agree with Verizon Wireless and AMSI that the Petition for Reconsideration and Motion for Stay are procedurally defective. Pursuant to section 1.106 of the Commission’s rules, a petition for reconsideration may be “filed by a person who is not a party to the proceeding,” only if it states “with particularity the manner in which the person’s interests are affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.”²⁰ USA Mobility should have filed a Petition to Deny during the comment period. Instead, it filed a Petition for Reconsideration with no reasonable explanation of why it was unable to file during the comment period following the release of the Accepted for Filing Public Notice. The only explanation provided by USA Mobility for its failure to file during the comment period is that Verizon Wireless did not notify it that an Application was filed;²¹ however, USA Mobility was put on notice when the Bureau released the Accepted for Filing Public Notice.²²

¹³ See Petition for Reconsideration at 2, 5.

¹⁴ See *id.* at 2, 6.

¹⁵ See Motion for Stay at 1.

¹⁶ See *id.* at 4.

¹⁷ See Joint Opposition at 1-3.

¹⁸ See *id.* at 5.

¹⁹ See *id.*

²⁰ 47 C.F.R. § 1.106(b)(1).

²¹ Reply at 3 (“Verizon Wireless can hardly be heard to complain about the timing of USA Mobility’s Petition, because it was Verizon Wireless’ own actions that dictated the timing. It was not until the day after the (continued....)”).

7. Moreover, even if we were to ignore the procedural defect and address the Petition for Reconsideration on the merits, USA Mobility fails to raise any arguments that would warrant denying the Application. All of the arguments raised by USA Mobility revolve around Verizon Wireless's duties to obtain consent from USA Mobility to transfer Verizon Wireless's membership interests in Nationwide and whether Verizon Wireless can sign and file the subject Application under the LLC Agreement and JOM Agreement. These issues lie outside the Commission's jurisdiction.²³ The Commission has repeatedly held that private disputes and contractual matters should be resolved by courts of competent jurisdiction.²⁴ Further, absent a final court judgment raising issues within the Commission's jurisdiction, we would not ordinarily act on matters stemming from private contracts,²⁵ and, absent a prior court injunction, we would not ordinarily withhold consent to an otherwise acceptable application.²⁶ For these reasons, we would deny both the Petition for Reconsideration and the Motion for Stay.

IV. ORDERING CLAUSE

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, 1.102 and 1.106 of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.102, 1.106, the Petition for Reconsideration and Motion for Stay filed by USA Mobility, Inc. are DISMISSED.

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Commission granted the application – during the period for reconsideration – that Verizon Wireless first informed USA Mobility of its intentions and requested USA Mobility's consent to the proposed transfer of control to AMSI.”)

²² Although Verizon Wireless and AMSI argue that USA Mobility failed to demonstrate injury, *see* Joint Opposition at 2-3, we decline to decide this issue at this time, because we have already found that the Petition for Reconsideration was procedurally defective.

²³ *See, e.g.*, Applications of Pueblo MSA Limited Partnership Station KNKN519 (MSA #241B), *Order*, 13 FCC Rcd 131, 133 ¶ 5 (Comm. Wireless Div. 1997) (“*Pueblo*”).

²⁴ *See, e.g.*, Applications of Northwest Broadcasting, Inc., Assignor And Western Pacific, Inc., Assignee, *Memorandum Opinion and Order*, 12 FCC Rcd 3289, 3293 ¶ 10 (1997) (“*Northwest Broadcasting*”); Applications of Arecibo Radio Corporation (Assignor) Hato Abajo Development Corp. (Assignee), *Memorandum Opinion and Order*, 101 F.C.C.2d 545, 548 ¶ 8 (1985); Applications of Verestar, Inc. (Debtor-in-Possession) For Consent to Assignment of Licenses to SES Americom, Inc., IB Docket No. 04-174, *Memorandum Opinion, Order and Authorization*, 19 FCC Rcd 22750, 22756 ¶ 16 (Int'l Bureau, Wireless Telecomm. Bureau 2004) (“*Verestar*”); Applications of Caribbean SMR, Inc., *Order*, 16 FCC Rcd 15663, 15664 ¶¶ 4, 5 (Comm. Wireless Div. 2003) (“*Caribbean SMR*”); Assignment of Call Sign WPFX961, From Elaine Hough, Assignor, To Chadmoore Wireless Group, Inc., Assignee, *Order*, 18 FCC Rcd 1875, 1877 ¶ 7 (Comm. Wireless Div. 2003) (“*Hough*”); *Pueblo*, 13 FCC Rcd. at 133 ¶ 5; *see also* Listeners' Guild, Inc. v. FCC, 813 F.2d 465, 469 (D.C. Cir. 1987).

²⁵ *See, e.g.*, *Northwest Broadcasting*, 12 FCC Rcd at 3293 ¶ 10; *Caribbean SMR*, 16 FCC Rcd at 15665 ¶ 5; *Hough*, 18 FCC Rcd at 1877 ¶ 7.

²⁶ *See, e.g.*, *Northwest Broadcasting*, 12 FCC Rcd at 3293 ¶ 10; *Verestar*, 19 FCC Rcd at 22756 ¶ 16; *Hough*, 18 FCC Rcd at 1877 ¶ 7. This decision does not foreclose any relief to which USA Mobility ultimately may be entitled based on the outcome of any subsequent litigation, if applicable. *See, e.g.*, *Hough*, 18 FCC Rcd at 1877 ¶ 7; *Pueblo*, 13 FCC Rcd at 134 ¶ 6.

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