

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

In the Matter of )  
 )  
 Application of New Cingular Wireless PCS, LLC ) ULS File No. 0004448347  
 and D&E Investments, Inc. )  
 )  
 For Consent To Assign Lower 700 MHz C Block )  
 Licenses )

**ORDER**

**Adopted: February 16, 2012**

**Released: February 16, 2012**

By the Chief, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this Order, we grant an application (the “Application”) of New Cingular Wireless PCS, LLC (“New Cingular”), an indirect, wholly-owned subsidiary of AT&T Inc. (“AT&T”), and D&E Investments, Inc. (“D&E” and, together with New Cingular, the “Applicants”), a wholly-owned subsidiary of Windstream Corporation (“Windstream”) to assign 700 MHz C Block licenses, 12 megahertz of paired spectrum, in six single county CMAs<sup>1</sup> in Pennsylvania from D&E to New Cingular.<sup>2</sup> In doing so, we deny the requests for relief set forth in the comments of the Rural Telecommunications Group (“RTG”) and the reply comments of the Rural Cellular Association (“RCA”). For the reasons discussed below, we find that AT&T’s proposed acquisition of D&E’s Lower 700 MHz C Block licenses is unlikely to cause competitive or other public interest harms and that it is in the public interest to grant the Application.

**II. BACKGROUND**

2. AT&T, incorporated in Delaware and headquartered in Dallas, Texas, is a communications holding company that, indirectly, wholly owns New Cingular.<sup>3</sup> Windstream Corporation is a communications and technology solutions provider, incorporated in Delaware and headquartered in Little Rock, Arkansas<sup>4</sup> that acquired D&E Communications in 2009.<sup>5</sup>

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<sup>1</sup> Cellular Market Areas (“CMAs”) are the areas in which the Commission initially granted licenses for the cellular service. See 47 C.F.R. § 22.90. The Applicants’ application involves the following six CMAS in Pennsylvania: CMA105 - Lancaster, CMA118 - Reading, CMA225 - Altoona, CMA251 - Williamsport, CMA259 - State College, and CMA623 - Lebanon. All six CMAs are single county CMAs and, with the exception of Williamsport, are non-rural markets.

<sup>2</sup> Application of D&E Investments, Inc. and New Cingular Wireless PCS, LLC for Assignment of Authorization, File No. 0004448347 (filed Nov. 15, 2010, amended Jan. 13, 2011).

<sup>3</sup> See AT&T Inc., SEC Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2010, at 1 (filed Mar. 1, 2011).

<sup>4</sup> Windstream Corporation, SEC Form 10-K, at Cover Page, 1 (filed Feb. 22, 2011), available at <http://www.sec.gov/Archives/edgar/data/1282266/000119312511042169/d10k.htm>.

3. On November 15, 2010, the Applicants filed the Application, pursuant to section 310(d) of the Communications Act of 1934, as amended,<sup>6</sup> seeking Commission approval to assign the subject licenses from D&E to New Cingular. Applicants amended the Application on January 13, 2011.<sup>7</sup> On January 5, 2011, the Commission released a public notice seeking comment on the proposed transaction.<sup>8</sup> In response to the *Comment Public Notice*, RTG filed its challenge to the proposed transaction in a document styled “Comments” on January 19, 2011. The Applicants filed a Joint Opposition on January 31, 2011. RCA filed its reply comments on February 7, 2011.

4. Pursuant to section 310(d) of the Communications Act, we must determine whether the Applicants have demonstrated that the proposed assignment of license will serve the public interest, convenience, and necessity.<sup>9</sup> We use here the standard of review and public interest framework that the Commission has applied in evaluating wireless transactions, which it most recently articulated in the Commission’s order approving the assignment of licenses from Qualcomm Incorporated to AT&T Inc.<sup>10</sup>

5. Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite “citizenship, character, financial, technical, and other qualifications.”<sup>11</sup> Section 310(d) obligates the Commission to consider whether the proposed assignee is qualified to hold Commission licenses.<sup>12</sup> No issues have been raised in this proceeding with respect to the basic qualifications of the proposed assignee, AT&T, which has previously and repeatedly been found qualified, through its subsidiaries, to hold Commission licenses. We therefore find that there is no reason to re-evaluate the basic qualifications of AT&T.

### III. DISCUSSION

6. RTG filed its pleading in a document styled as “Comments” and RCA filed “Reply Comments” supporting RTG’s initial comments; neither filed a petition to deny.<sup>13</sup> In their filings, RTG and RCA request that we deny the proposed transaction.<sup>14</sup> We note that neither RTG’s Comments nor RCA’s Reply Comments meets the requirements for a petition to deny.<sup>15</sup> RTG fails to raise any substantive issues, or discuss any specific competitive harm, that would result from our approval of the particular transaction before us involving any of these Pennsylvania CMAs. Instead, RTG raises, in general terms, its concern that this transaction would “further consolidate the already scarce amount of

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<sup>5</sup> See Windstream’s Annual Report at 3, available at <http://files.shareholder.com/downloads/ABEA-43PVYW/1672859836x0x499369/CDD085AF-40FF-407E-8C14-1562A9DEED0A/1500026500.pdf> (last visited Feb. 2, 2012).

<sup>6</sup> 47 U.S.C. § 310(d).

<sup>7</sup> See amendments at FCC File No. 0004448347.

<sup>8</sup> New Cingular Wireless PCS, LLC and D&E Investments, Inc. Seek FCC Consent to the Assignment of Lower 700 MHz Band Licenses, ULS File No. 0004448347, *Public Notice*, 26 FCC Rcd 82 (2011) (“*Comment Public Notice*”).

<sup>9</sup> 47 U.S.C. § 310(d).

<sup>10</sup> Application of AT&T Inc. and Qualcomm Incorporated For Consent To Assign Licenses and Authorizations, WT Docket No. 11-18, *Order*, FCC 11-18, ¶¶ 23-26 (rel. Dec. 22, 2011) (“*AT&T-Qualcomm Order*”).

<sup>11</sup> 47 U.S.C. §§ 308, 310(d). See also, e.g., *AT&T-Qualcomm Order* at ¶ 27.

<sup>12</sup> See, e.g., *AT&T-Qualcomm Order* at ¶ 28.

<sup>13</sup> See generally RTG Comments; RCA Reply Comments.

<sup>14</sup> RTG Comments; RCA Reply Comments.

<sup>15</sup> See 47 C.F.R. § 1.939(d). See also Joint Opposition at n 2.

spectrum below 2.3 GHz into the hands of AT&T and that such a result is anticompetitive and against the public interest.<sup>16</sup> Similarly, RCA asks that the proposed transaction be denied in light of the increasing dominance in the wireless market of AT&T and Verizon Wireless and because it perpetuates competitive harms resulting from market consolidation in the wireless market.<sup>17</sup> As an alternative to denial of the application, RTG requests that we consent to this transaction only in markets where, post-transaction, AT&T would control less than 110 megahertz of total spectrum below 2.3 GHz.<sup>18</sup> Also, both RTG and RCA argue that any approval of this transaction should include conditions applicable to AT&T generally<sup>19</sup> requiring data roaming, device interoperability, and the elimination of exclusivity agreements.<sup>20</sup>

7. Under section 1.939(d) of the Commission's rules, a petition to deny must contain specific allegations of fact sufficient to make a prima facie showing that a grant of the application would be inconsistent with the public interest, convenience and necessity.<sup>21</sup> RTG and RCA have provided no specific allegations of fact with respect to the instant transaction. There are no facts or evidence in the record to support a finding that the approval of AT&T's proposed acquisition of D&E's 700 MHz C Block licenses in these six single-county CMAs in Pennsylvania is likely to cause competitive or public interest harms.<sup>22</sup> Accordingly, we deny the requests for relief set forth in RTG's Comments and RCA's Reply Comments.

8. We note that Applicants state the proposed transaction would enable AT&T to achieve greater operational efficiencies and offer improved, more robust, and advanced services to meet the needs of new and existing subscribers.<sup>23</sup> They also further represent that the additional 700 MHz spectrum would enable AT&T to increase its system capacity to enhance existing services, better accommodate its overall growth, and facilitate the provision of additional products and services to the public.<sup>24</sup> In the absence of any showing of harm specific to this transaction, we find that the transaction would serve the public interest, convenience, and necessity and hereby grant it.

### III. ORDERING CLAUSES

9. Accordingly, having reviewed the application and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the application for assignment of 700 MHz C Block licenses in six CMAs in Pennsylvania (CMA 105 - Lancaster, PA, CMA 118 - Reading, PA, CMA 225 - Altoona, PA, CMA 251 - Williamsport, PA, CMA 259 - State College, PA, and CMA 623 - Lebanon, PA) from D&E Investments, Inc. to New Cingular Wireless PCS, LLC is GRANTED.

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<sup>16</sup> RTG Comments at 2-4.

<sup>17</sup> RCA Reply Comments at 2-4.

<sup>18</sup> RTG Comments at 3.

<sup>19</sup> RCA supports and agrees with RTG's requested conditions. *See* RCA Reply Comments at 4-6.

<sup>20</sup> RTG Comments at 3.

<sup>21</sup> 47 C.F.R. § 1.939(d). The Commission's rules also requires that a petition to deny must contain specific allegations of fact sufficient to make a prima facie showing that the petitioner is a party in interest. 47 C.F.R. § 1.939(d).

<sup>22</sup> *See* Joint Opposition at 3-5 (addressing the lack of factual support).

<sup>23</sup> File no. 0004448347, Description of Transaction, Public Interest Showing, and Related Demonstrations at 2 (filed Nov. 15, 2010, amended Jan. 13, 2011) ("Public Interest Statement").

<sup>24</sup> Public Interest Statement at 2.

10. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the requests for relief set forth in the Comments of the Rural Telecommunications Group and the Reply Comments of the Rural Cellular Association are DENIED for the reasons stated herein.

11. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this Order.

12. 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

Rick Kaplan  
Chief, Wireless Telecommunications Bureau