

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

In the Matter of
Applications of Cellco Partnership d/b/a Verizon Wireless, Coral Wireless, LLC and Coral Wireless Licenses, LLC
For Consent To Assign Seven Personal Communications Service Licenses Covering Hawaii
ULS File Nos. 0006225924 and 0006225931

ORDER

Adopted: October 27, 2014

Released: October 27, 2014

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

1. In this Order, we dismiss a petition to deny ("Petition") filed by Waimana Enterprises, Inc. ("Waimana") against the applications of Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless"), Coral Wireless, LLC, and Coral Wireless Licenses, LLC (Coral Wireless, LLC and Coral Wireless Licenses, LLC together are "Coral," and together with Verizon Wireless, the "Applicants") to assign seven Personal Communications Service ("PCS") spectrum licenses from Coral to Verizon Wireless.

I. BACKGROUND

2. On April 16, 2014, Verizon Wireless and Coral filed the Applications pursuant to section 310(d) of the Communications Act of 1934, as amended (the "Communications Act"), seeking approval to assign seven PCS spectrum licenses. The Commission released a Public Notice on May 21, 2014, seeking comment on the Applications. In response to the Comment Public Notice, Waimana submitted its Petition, requesting the Commission to deny the Applications or hold them in abeyance due to its allegations that Coral has not deployed wireless infrastructure or significant wireless services in Tribal lands (i.e., Hawaiian Home Lands ("Home Lands")) despite having received substantial federal

1 Petition to Deny of Waimana Enterprises, Inc., filed June 4, 2014.

2 ULS File Nos. 0006225924 and 0006225931 (the "Applications").

3 The Applications were amended on Sept. 5, 2014.

4 47 U.S.C. § 310(d).

5 Cellco Partnership d/b/a Verizon Wireless, Coral Wireless, LLC and Coral Wireless Licenses, LLC Seek FCC Consent to the Assignment of Seven Personal Communications Service Licenses Covering Hawaii, ULS File Nos. 0006225924 and 0006225931, Public Notice, DA 14-690 (rel. May 21, 2014) ("Comment Public Notice").

universal service fund (“USF”) support.<sup>6</sup> Waimana asks, alternatively, that grant of the Applications be conditioned on requiring Verizon Wireless to use the subject licenses to serve the Home Lands.<sup>7</sup>

3. Waimana is a Native Hawaiian corporation that holds an exclusive license to construct and operate a broadband telecommunications network to serve the Home Lands,<sup>8</sup> a group of areas held in trust for Native Hawaiians by the state of Hawaii.<sup>9</sup> Waimana asserts in its Petition that Coral’s apparent failure to deploy wireless infrastructure or significant wireless services in the Home Lands despite having received \$131.2 million of federal high-cost support possibly constitutes a violation of section 254(e) of the Communications Act, which states that providers receiving such support shall use it “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>10</sup> Waimana contends that the failure to construct and operate a wireless network to serve the Home Lands amounts to a windfall for Coral and that before the Commission acts on the Applications it should conduct an investigation to account for Coral’s USF support.<sup>11</sup> Waimana asserts that it serves as a “*de facto* agent” of the State of Hawaii’s Department of Hawaiian Home Lands and that grant of the Applications without the Home Lands receiving any “tangible benefit” from the \$131.2 million in USF support would “directly and substantially impair Waimana’s telecommunications planning efforts.”<sup>12</sup> Waimana states that its Sandwich Isles Wireless subsidiary consequently would “come under major pressure . . . to extend and increase its wireless resale operations within [Home Lands] at whatever the cost.”<sup>13</sup>

4. On June 16, 2014, the Applicants filed separate oppositions to the Petition. Verizon Wireless argues that Waimana’s complaint about Coral’s alleged misuse of USF support does not relate to the proposed transaction and therefore must be disregarded under Commission precedent.<sup>14</sup> Verizon Wireless further contends that Waimana’s proposed condition that Verizon Wireless become an ETC with obligations to construct certain wireless facilities is unprecedented and would amount to an attempt to remedy “pre-existing harms or harms that are unrelated to the transaction.”<sup>15</sup>

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<sup>6</sup> Petition at 10-12; Supplement to Petition to Deny of Waimana Enterprises, Inc., filed Sept. 15, 2014 at 2 (“Waimana Supplement”).

<sup>7</sup> Petition at 13; Waimana Supplement at 3.

<sup>8</sup> Petition at 2.

<sup>9</sup> For the benefit of Native Hawaiians, Congress in 1921 created the Home Lands, which consist of 203,000 acres spread across seventy non-contiguous and almost completely rural areas. See *Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, WC Docket No. 09-133, *Order*, 27 FCC Rcd 470, 470 ¶ 1 n.4 (WCB 2012) (“*Sandwich Isles Communications*”). Waimana’s wholly-owned subsidiary Sandwich Isles Communications, Inc. is a rural incumbent local exchange carrier (“incumbent LEC”) that provides wireline telecommunications services within unserved and underserved portions of the Home Lands. *Sandwich Isles Communications*, 27 FCC Rcd at 470 ¶ 2. Pa Makana LLC d/b/a Sandwich Isles Wireless, also a wholly-owned subsidiary of Waimana, was designated as an Eligible Telecommunications Carrier (“ETC”) by the Hawaii Public Utilities Commission. Petition at 2-3.

<sup>10</sup> 47 U.S.C. § 254(e).

<sup>11</sup> Petition at 12.

<sup>12</sup> Petition at 7, 9.

<sup>13</sup> Petition at 9. Waimana contends that it would come under pressure either to acquire spectrum and construct a facilities network without federal high-cost support or extend its resale operations under less favorable terms and conditions. Petition at 9.

<sup>14</sup> Opposition of Verizon Wireless to Petition to Deny, filed June 16, 2014, at 2 (“Verizon Wireless Opposition”).

<sup>15</sup> Verizon Wireless Opposition at 3.

5. In its opposition, Coral argues that the Commission should dismiss Waimana's Petition for lack of party-in-interest standing, maintaining that Waimana alleged no specific facts showing that grant would cause it to suffer any injury, much less a direct one.<sup>16</sup> Coral notes that any funding difficulties that Waimana experiences for deploying wireless infrastructure in the Home Lands would not be alleviated by Commission denial of the Applications.<sup>17</sup> Coral additionally argues that Waimana's assertions about Coral's use of high-cost support are meritless, as it is not obliged to construct facilities in any particular area and it has provided service to consumers in the Home Lands.<sup>18</sup> Coral lastly contends that Waimana's claims and the relief it seeks are not specific to the proposed transaction, and that the Commission can and does enforce its USF rules through separate proceedings.<sup>19</sup>

6. On June 23, 2014, Waimana submitted its reply, arguing that grant of the Applications would terminate the Commission's jurisdiction over Coral as a PCS licensee and would allow the USF support that Coral received to have been "wasted or otherwise abused."<sup>20</sup> Waimana further argues that the Applicants in their oppositions disregard the alleged section 254(e) violation raised in the Petition. Waimana also claims it has a party-in-interest standing pursuant to Section 1.939(d) of the Commission's rules because Waimana and its principal Mr. Hee have a "direct and substantial interest in the deployment of wireless infrastructure to serve the Hawaiian Home Lands and in the use of scarce, previously distributed high-cost support for that purpose."<sup>21</sup>

## II. DISCUSSION

7. The Communications Act and the Commission's rules require that a petition to deny must contain specific allegations of fact sufficient to show that the petitioner is a party in interest.<sup>22</sup> To establish party-in-interest standing, a petitioner must allege facts sufficient to demonstrate that grant of the subject application would cause it to suffer a direct injury.<sup>23</sup> In addition, a petitioner must demonstrate a causal link between the claimed injury and the challenged action: it must demonstrate that the injury can be traced to the challenged action and that the injury would be prevented or redressed by the relief requested.<sup>24</sup>

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<sup>16</sup> Opposition of Coral Wireless and Coral Wireless Licenses to Petition to Deny, filed June 16, 2014 at 3-4 ("Coral Opposition").

<sup>17</sup> Coral Opposition at 5.

<sup>18</sup> Coral Opposition at 6-7.

<sup>19</sup> Coral Opposition at 9-10.

<sup>20</sup> Reply to Oppositions of Waimana Enterprises, Inc., filed June 23, 2014, at 7 ("Waimana Reply").

<sup>21</sup> Waimana Reply at 5.

<sup>22</sup> 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.939(d).

<sup>23</sup> Applications of T-Mobile License, LLC, AT&T Mobility Spectrum LLC and New Cingular Wireless PCS, LLC For Consent to Assign AWS-1 Licenses, *Order*, 27 FCC Rcd 4124, 4126 ¶ 6 (WTB 2012) ("*T-Mobile-AT&T Order*"); Wireless Co., L.P., *Order*, 10 FCC Rcd 13233, 13235 ¶ 7 (WTB 1995) ("*Wireless Co.*"), citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972).

<sup>24</sup> *T-Mobile-AT&T Order*, 27 FCC Rcd at 4126 ¶ 6; *Wireless Co.*, 10 FCC Rcd at 13235 ¶ 7. The Commission repeatedly has upheld these standards. See, e.g., T-Mobile License, LLC, *Memorandum Opinion and Order*, 29 FCC Rcd 6350, 6355 ¶ 12 (2014); Applications of GCI Communications Corp., ACS Wireless Sub, Inc., ACS of Anchorage License Sub, Inc. and Unicom, Inc. for Consent to Assign Licenses to The Alaska Wireless Network, LLC, *Memorandum Opinion and Order and Declaratory Ruling*, 28 FCC Rcd 10433, 10466-67 ¶ 83 (2013); Application of New Cingular Wireless PCS, LLC and D&E Investments, Inc. For Consent to Assign Lower 700 MHz C Block Licenses, *Order*, 27 FCC Rcd 1669, 1670-71 ¶ 6 (WTB 2012).

8. We find that Waimana's Petition fails to assert specific allegations of fact sufficient to show that Waimana is a party-in-interest with respect to this particular transaction. The Petition's explanation as to how Waimana might be directly injured by an assignment of spectrum to Verizon Wireless is speculative and vague, and fails to show how grant of the Applications might impact Waimana's ability to access USF support. We note that Waimana's assertion of standing can be distinguished from that in the *Verizon Wireless-ENMR Order*, for example, where the petitioner, a provider with Tribal interests, could establish standing by raising competitive issues specific to the transaction at issue and where the proposed assignor leased facility space from the petitioner.<sup>25</sup> For these reasons, we dismiss the Petition for lack of party-in-interest standing.<sup>26</sup>

9. Even if Waimana could establish party-in-interest standing, however, we still would dismiss the Petition because the alleged section 254(e) violation upon which Waimana relies would be better addressed in a different proceeding. Although the Commission possesses broad discretion to review a variety of factors in making a public interest determination with respect to an assignment application,<sup>27</sup> the type of allegation that Waimana raises is better left to be considered in an appropriate enforcement forum.<sup>28</sup> Our decision here to dismiss the Petition in no way would prevent the submission of a complaint by the public or the initiation of an enforcement action against even former licensees.<sup>29</sup> Moreover, the misconduct alleged by Waimana is not of the type created or exacerbated by the proposed transaction. Waimana does not allege that the proposed transaction itself would result in a *per se* violation of any Commission rule, nor has it demonstrated how the alleged violation is related to the proposed transaction before us.<sup>30</sup> Furthermore, we would not impose the conditions that Waimana alternatively has requested, as the Commission imposes such conditions only to remedy harms that arise from a transaction (*i.e.*, transaction-specific harms),<sup>31</sup> and Waimana has made no such demonstration here. Accordingly, we still would dismiss the Petition because Waimana's allegations are better addressed elsewhere.<sup>32</sup>

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<sup>25</sup> Applications of Cellco Partnership d/b/a Verizon Wireless and E.N.M.R. Telephone Cooperative and Its Wholly-Owned Subsidiary Plateau Telecommunications, Incorporated For Consent To Assign Licenses and Authority, *Memorandum Opinion and Order*, 27 FCC Rcd 12154, 12157, 12159-60 n.50 ¶¶ 11, 16 (WTB, IB 2012) ("*Verizon Wireless-ENMR Order*").

<sup>26</sup> On September 15, 2014, Waimana submitted a supplement to its Petition, along with a motion for leave to file the supplement out of time. See Supplement to Petition to Deny of Waimana Enterprises, Inc., filed Sept. 15, 2014 ("Supplement"); and Motion for Leave to File Supplement to Petition to Deny, filed Sept. 15, 2014. Waimana argues in the Supplement that amendments filed by the Applicants do not address the misconduct alleged in the Petition. Because we find that Waimana lacks party-in-interest standing, we need not address the Supplement.

<sup>27</sup> See Qwest Communications International, Inc. and US WEST, Inc., Applications for Transfer of Control, *Memorandum Opinion and Order*, 15 FCC Rcd 5376, 5392-93 ¶ 28 (2000) ("*Qwest-US WEST Order*").

<sup>28</sup> See *Qwest-US WEST Order*, 15 FCC Rcd at 5392-93 ¶ 28. See also Applications of Craig O. McCaw, Transferor, and American Tel. & Tel Co., Transferee, For Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and its Subsidiaries, *Memorandum Opinion and Order*, 9 FCC Rcd 5836, 5904 ¶ 123 (1994), *aff'd sub nom. SBC Communications Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995).

<sup>29</sup> See, e.g., Visiplex, Inc. Licensee of Stations WPJU326 and WQBF524 and Visiplex Technologies, Inc. Former Licensee of Stations WPJU326 and WQBF524, *Order*, 28 FCC Rcd 4058 (EB 2013).

<sup>30</sup> See Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control, *Memorandum Opinion and Order*, 24 FCC Rcd 13915, 13974-75 ¶ 150 (2009) ("*AT&T-Centennial Order*").

<sup>31</sup> See, e.g., Applications of AT&T Inc. and Atlantic Tele-Network, Inc. (For Consent to Transfer Control of and Assign Licenses and Authorizations), *Memorandum Opinion and Order*, 28 FCC Rcd 13670, 13719 ¶ 90 (WTB, IB 2013); *AT&T-Centennial Order*, 24 FCC Rcd at 13969, 13972 ¶¶ 133, 141.

<sup>32</sup> Nothing in Waimana's Supplement would alter this conclusion.

**III. ORDERING CLAUSES**

10. Accordingly, having reviewed the Applications and the record in this matter, IT IS 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 Petition to Deny filed by Waimana Enterprises, Inc. is hereby DISMISSED for the reasons stated herein.

11. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, that the staff of the Mobility Division of the Wireless Telecommunications Bureau SHALL PROCESS the following applications consistent with this *Order* and the Commission's rules: ULS File Nos. 0006225924 and 0006225931.

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

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