

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

In the Matter of)	
)	
Applications of Cellco Partnership d/b/a)	WT Docket No. 12-4
Verizon Wireless and SpectrumCo LLC and Cox)	(Terminated)
TMI, LLC for Consent to Assign AWS-1)	
Licenses)	
)	
Applications of Verizon Wireless and Leap for)	ULS File Nos. 0004942973
Consent to Exchange Lower 700 MHz, AWS-1,)	0004942992
And PCS Licenses)	0004952444
)	0004949596
)	0004949598
)	
Application of T-Mobile License LLC and Cellco)	WT Docket No. 12-175
Partnership d/b/a Verizon Wireless for Consent to)	(Terminated)
Assign Licenses)	

ORDER ON RECONSIDERATION

Adopted: April 15, 2015

Released: April 16, 2015

By the Commission:

I. INTRODUCTION

1. In this Order on Reconsideration, we dismiss or alternatively deny the petition for reconsideration, filed by NTCH, Inc. (NTCH),¹ of the Commission’s Memorandum Opinion and Order and Declaratory Ruling (*Declaratory Ruling*) in the above captioned dockets with respect to the finding that “Vodafone’s general partnership interest in Verizon Wireless is in the public interest.”² In its Petition, NTCH challenges the Commission’s reliance in that *Declaratory Ruling* on the foreign ownership forbearance policy adopted in the *First Report and Order* in IB Docket No. 11-133.³

¹ NTCH, Inc., Petition for Reconsideration, WT Docket No. 12-4 *et al.* (filed Sept. 24, 2012) (herein, “Petition” or “petition for reconsideration”).

² *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses*, WT Docket No. 12-4, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 10698, 10763, ¶ 170 (2012) (*Declaratory Ruling*).

³ *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IB Docket No. 11-133, First Report and Order, 27 FCC Rcd 9832 (2012) (*First Report and Order*). In response, Verizon Wireless filed an opposition to NTCH’s petition for reconsideration, on behalf of itself and SpectrumCo, LLC; Cox TMI Wireless, LLC; Leap Wireless International, Inc. and its affiliates; and T-Mobile License LLC. Opposition to Petition for Reconsideration (October 10, 2012). NTCH filed a reply, Reply to Opposition for Petition for Reconsideration (October 22, 2012), and then a supplemental filing, Letter from Donald J. Evans, May 16, 2013 (Evans Letter).

2. On September 6, 2013, pursuant to the *Foreign Ownership Second Report and Order*,⁴ Verizon Communications Inc. (Verizon), the 55 percent controlling U.S. parent of Verizon Wireless, filed on behalf of its common carrier license subsidiaries a petition for declaratory ruling seeking approval in connection with its planned acquisition of all of the remaining 45 percent interest in Verizon Wireless held by Vodafone.⁵ On December 4, 2013, the International Bureau granted the petition for declaratory ruling.⁶ On February 21, 2014, Verizon acquired the remaining 45 percent Vodafone interest in Verizon Wireless.⁷ Accordingly, the Vodafone interest in Verizon Wireless that is the subject of NTCH's challenge in its petition for reconsideration no longer exists. In light of the buyout of the Vodafone interest in Verizon Wireless by Verizon, on October 1, 2014, the International Bureau and Wireless Telecommunications Bureau, after coordination with Executive Branch agencies, granted a request from Verizon to remove the national security condition imposed in the *Declaratory Ruling*.⁸

II. DISCUSSION

3. NTCH's first argument is that the Commission's order approving the transactions in this case improperly relied upon its Section 310(b)(3) forbearance analysis in the *First Report and Order*, because that order had not yet become effective when it adopted the *Declaratory Ruling*.

4. At the outset, we note that this challenge to the Commission's order is now moot. Vodafone no longer holds the 45 percent foreign interest in Verizon Wireless that NTCH claims was not properly approved by the Commission. Accordingly, we dismiss as moot this request that we rescind the grant of the applications approved in the *Declaratory Ruling*. As a separate and independent basis for denial, however, we further conclude that NTCH's argument is without merit.

5. There is no dispute as to the timing of the two orders at issue. The *First Report and Order* was both adopted and released to the public on August 17, 2012, prior to the adoption on August 21, 2012 of the *Declaratory Ruling* approving the applications in these dockets.⁹ The *First Report and Order* also became effective on August 22, 2012 upon publication in the Federal Register before the *Declaratory Ruling* in these dockets became effective, which occurred on its August 23, 2012, release date. However, NTCH argues that since the *First Report and Order* had not become effective, as it was not yet published in the Federal Register, when the *Declaratory Ruling* here was adopted (albeit not yet

⁴ *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IB Docket No. 11-133, Second Report and Order, 28 FCC Rcd 5741 (2013) (*Foreign Ownership Second Report and Order*).

⁵ See Petition for Declaratory Ruling, File No. ISP-PDR-20130906-00005.

⁶ See Petition for Declaratory Ruling Granted, Public Notice, IB Docket No. 13-230, DA 13-2323 (Int'l Bur. Dec. 4, 2013).

⁷ See Letter from Katharine R. Saunders, Assistant General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed March 21, 2014 at 2; Verizon Press Release, Verizon Completes Acquisition of Vodafone's 45 Percent Indirect Interest in Verizon Wireless, February 21, 2014, available at <http://newscenter.verizon.com/corporate/news-articles/2014/02-21-acquisition-of-vodafone-stake-in-vzw-complete/> (last visited Mar. 3, 2015).

⁸ In the *Declaratory Ruling*, the Commission had conditioned the grant of the applications and petition for declaratory ruling on compliance by Verizon Wireless with the terms contained in its security agreement with the Executive Branch agencies. *Declaratory Ruling*, 27 FCC Rcd at 10770, ¶ 191. Based on the buyout of the Vodafone ownership in Verizon Wireless, the Executive Branch agencies concurred with Verizon's request to remove this condition and terminated the security agreement. See *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC, et al.*, WT Docket Nos. 12-4, 12-175 and ULS File Nos. 0004942973, et al., Memorandum Opinion and Order, 29 FCC Rcd 11652, 11654, ¶ 4 (Int'l Bur./Wireless Bur. 2014).

⁹ FCC Daily Digest, Aug. 20, 2012 (providing public notice of release of *First Report and Order* on Aug. 17, 2012).

effective), “the Commission could not lawfully apply to this transaction a policy which was not in effect” yet.¹⁰

6. Contrary to NTCH’s argument, the Commission’s *Declaratory Ruling* did not apply a rule that had not yet taken effect. The Commission made its *Declaratory Ruling* in these dockets effective only upon release, not upon adoption.¹¹ And the *First Report and Order* was published in the Federal Register – and became effective – *prior* to the release date of the *Declaratory Ruling* in these dockets.¹²

7. Moreover, the Commission has broad authority and discretion to “conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”¹³ It is a rational exercise of this discretion to apply legal and policy determinations that the Commission has made where the order making the determination has become effective before the order applying it becomes effective, and where the order making the determination was adopted and released before the order applying it was adopted.¹⁴ Further, requiring the Commission to wait an additional one or two days to adopt its decision approving the applications here, pending publication of the already adopted and released *First Report and Order*, as NTCH in essence argues that it should have done, would certainly elevate form over substance, and there is no requirement that the Commission needed to do so. Finally, we note that in any event NTCH has now had abundant opportunity – in both its two petitions to deny and now in its petition for reconsideration – to demonstrate why the public interest was not served by allowing Vodafone’s partial ownership of Verizon Wireless. It has not done so, and we find no reason to depart from the Commission’s original decision to rely upon the forbearance policy of the *First Report and Order*, which has now been effective since August 22, 2012.¹⁵

8. NTCH next argues that, because the *First Report and Order* became effective after the Commission approved the applications in these dockets, “no member of the public had an opportunity to comment on the situation” because “[n]o public notice was issued as required by” the *First Report and Order*.¹⁶ NTCH asserts that Section 309 of the Communications Act “requires that all applications for license be placed on public notice so as to grant interested parties an opportunity to raise material concerns about the applicant and/or applications,”¹⁷ and that the “opportunity for comment must be a meaningful opportunity.”¹⁸

¹⁰ Petition at 5.

¹¹ *Declaratory Ruling*, 27 FCC Rcd at 10770, ¶ 193.

¹² *See supra* ¶ 5.

¹³ 47 U.S.C. § 154(j); *see FCC v. Schreiber*, 381 U.S. 279 (1965).

¹⁴ *See KTVO, Inc.*, 63 F.C.C. 2d 770, ¶ 14 (Rev. Bd. 1977) (“To exclude pending cases from the applicability of new Commission ‘law making’ would frustrate the Commission’s ability to promote the public interest.”). There may be exceptions to this principle where issues of fair notice, reasonable reliance, and settled expectations counsel against it. *See, e.g., Combs v. Commissioner of Social Security*, 459 F.3d 640 (6th Cir. 2006) (en banc); *Marrie v. SEC*, 374 F.3d 1196, 1206 (D.C. Cir. 2004). NTCH has identified no such issues here.

¹⁵ NTCH’s suggestion in its supplemental filing that the U.S. wireless infrastructure “is becoming overly dominated by foreign-owned companies to the detriment of the public interest” (Evans Letter at 2) is unrelated to this proceeding, involving the 45 percent Vodafone interest held in Verizon for many years. It is also wholly speculative as to the impact of foreign ownership of common carrier licensees on the public interest. NTCH’s suggestion in its supplemental filing also is inconsistent with the determinations made in the forbearance analysis in the *First Report and Order*, which NTCH says that it does not challenge, and with the public interest analysis of the Commission’s prior decisions on which the *First Report and Order* was based.

¹⁶ Petition at 7.

¹⁷ *Id.* at 8.

¹⁸ *Id.*

9. Here again, we dismiss NTCH's arguments as moot, since Vodafone no longer holds the interest that is the subject of NTCH's Section 310(b)(3) arguments. As a separate and independent basis for denial, we also conclude that the arguments are again unpersuasive. Pursuant to Sections 309(d) and 310(d) of the Communications Act, the Commission has already provided NTCH with a number of opportunities in these dockets to "raise material concerns" about Vodafone's 45 percent ownership of Verizon Wireless.¹⁹ Its petitions to deny did not even refer to this question and, as noted above, its petition for reconsideration and supplement thereto raise no new issues with respect to the nature of that ownership or whether it is consistent with the public interest. The requirements applicable to such licensing decisions were therefore fulfilled.²⁰ Indeed, less than four months after filing its Petition, NTCH joined Verizon Wireless in filing applications that endorsed the latter's foreign ownership structure as consistent with the rules, the public interest, and Verizon Wireless's legal qualifications.²¹

10. NTCH also misunderstands the effect of the Commission's new approach to Section 310(b)(3). In the *First Report and Order*, the Commission discerned "no public interest distinction" between foreign ownership interests under Section 310(b)(3) to which the order applied and foreign ownership interests analyzed under Section 310(b)(4).²² It therefore applied to the former interests the policies and procedures applicable to the latter.²³ By exercising the Commission's authority under Section 10 of the Communications Act to forbear for an entire class of common carriers, it avoided the need for "each common carrier to individually seek forbearance."²⁴

11. Thus, following the *First Report and Order*, which NTCH does not challenge, the only question in this proceeding was whether Vodafone's 45 percent interest in Verizon Wireless satisfied the same "public interest" standard we apply under Section 310(b)(4). And the Commission had already determined, in prior decisions involving acquisition by Verizon Wireless of a controlling interest in other wireless licensees, that Vodafone's 45 percent interest satisfied that Section 310(b)(4) standard.²⁵ Verizon Wireless confirmed in this case that there had been no changes in that foreign ownership since the Commission's prior approvals, and later also reconfirmed that it was unaware of any changes to the aggregate foreign ownership of Verizon and Vodafone that were inconsistent with the requirements set forth in the *2000 Bell Atlantic-Vodafone Order*.²⁶ The Commission also noted in the *Declaratory Ruling* that "[n]o commenters have identified any basis for rebutting [that] analysis, which identified no

¹⁹ See *Declaratory Ruling*, 27 FCC Rcd at 10707-10, ¶¶ 20-27.

²⁰ We note that the case relied on by NTCH involved Administrative Procedure Act rulemaking, not Section 309 licensing. See *Rural Cellular Association v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

²¹ See File No. 0005573976 (filed Jan. 4, 2013). See also *id.*, FCC Form 603, Ex. 1 and Ex. 4 (proposed assignment "will fully comply with the Commission's rules," Verizon Wireless's "legal qualifications to hold and control FCC license . . . are matters of public record," and grant "will serve the public interest").

²² *First Report and Order*, 27 FCC Rcd at 9840-41, ¶ 19.

²³ *Id.* at 9841, ¶ 20 ("incorporating our section 310(b)(4) policies and procedures").

²⁴ *First Report and Order*, 27 FCC Rcd at 9842 n.54. See also 47 U.S.C. § 160; *Earthlink, Inc. v. FCC*, 462 F.3d 1, 8 (D.C. Cir. 2006).

²⁵ See, e.g., *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corp.*, WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463, 12521-26, ¶¶ 139-50 & n.446 (2008); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17541-45, ¶¶ 221-30 (2008).

²⁶ *Applications of Vodafone AirTouch, Plc, and Bell Atlantic Corp. for Consent to Transfer Control or Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd 16507 (Wireless Bur./Int'l Bur. 2000) (*2000 Bell Atlantic-Vodafone Order*); *Declaratory Ruling*, 27 FCC Rcd at 10765-66, ¶ 174-75 & n.412 (citing application and associated letter).

competitive concerns with respect to foreign ownership of Verizon Wireless.”²⁷ The Commission’s approval of the transactions here was therefore proper. In these circumstances, the *First Report and Order* did not require that Verizon Wireless resubmit that identical showing for further comment, under the same public interest standard that the Commission had already applied. In any event, NTCH has had ample opportunity to raise any concerns about Vodafone’s foreign ownership interest and it has failed to identify any such concerns that are related to that interest or relevant either to the principles enunciated in the *First Report and Order* or to the Commission’s prior analysis upon which that order relied.

12. NTCH’s final argument relates to other licenses or license applications of Verizon Wireless that are wholly unrelated to this transaction. We dismiss or alternatively deny this claim for a number of independent reasons. First, the Commission generally will not impose conditions that are unrelated to the transaction at issue.²⁸ Section 309(d)(1) of the Communications Act grants standing to parties in interest to address the applications at issue, not other unrelated ones.²⁹ Second, NTCH has failed to demonstrate why this argument could not have previously been presented to the Commission in its two earlier petitions to deny.³⁰ Here, NTCH argues that the *First Report and Order* has prospective forbearance effect only, and thus cannot serve to excuse what it claims to be prior noncompliance by Verizon Wireless with Section 310(b)(3). Thus, its claim is based not on any alleged effect of the *First Report and Order*, but from its assertion that “Since 2000, Vodafone’s ownership interest has plainly and indisputably fallen within the flat prohibition of Section 310(b)(3).”³¹ NTCH has advanced no reason why it could not have raised this claim in either of its petitions to deny in these dockets, neither of which challenged any aspect of the foreign ownership showing made by Verizon Wireless in its applications here.

13. Third, what NTCH is seeking is the denial or revocation of these unrelated licenses or applications based solely on its claim that, prior to the application of the policy of the *First Report and Order* in the *Declaratory Ruling* in this case, Verizon Wireless was in violation of Section 310(b). It cites no basis for such a denial or revocation. NTCH recognizes that Verizon Wireless has provided the Commission with “full knowledge that Vodafone held the interests” at issue here.³² Verizon Wireless has also done so in advance of each of its proposed acquisitions, in applications seeking prior consent thereto. In these circumstances, NTCH has advanced no basis for concluding that the Commission should consider any of the forms of relief it proposes, that Verizon Wireless may lack the basic qualifications to remain a Commission licensee notwithstanding such prior notifications, or that the public interest would be served by such action.³³ Indeed, as noted above, NTCH itself has filed and successfully obtained

²⁷ *Declaratory Ruling*, 27 FCC Rcd at 10766, ¶ 175.

²⁸ See, e.g., *Applications of SOFTBANK CORP., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation For Consent to Transfer Control of Licenses and Authorizations*, IB Docket No. 12-343, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, 9672, ¶ 74 (2013).

²⁹ 47 U.S.C. § 309(d)(1).

³⁰ See 47 C.F.R. § 1.106(c).

³¹ Petition at 6.

³² Reply to Opposition for Petition for Reconsideration at 6.

³³ While we have the authority to address issues of licensees’ prior compliance with the Communications Act and Commission rules and policies even after they are moot, we note that “an agency’s decision not to prosecute or enforce . . . is a decision generally committed to an agency’s absolute discretion,” based on a “complicated balancing of a number of factors.” These include not simply whether a violation has occurred, but a range of other considerations, including “whether the particular enforcement action fits the agency’s overall policies.” *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). See 5 U.S.C. § 701(a)(2) (judicial review provisions apply “except to the extent that . . . agency action is committed to agency discretion by law”). See also *New York State Dep’t of Law v. FCC*, 984 F.2d 1209 (D.C. Cir. 1993) (applying *Chaney* to Commission decision to settle enforcement action); *Sagir, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 23762, 23772-73, ¶ 14 (1998) (“staff has broad discretion in

(continued....)

Commission approval of its own applications to assign licenses to Verizon Wireless, premised on representations that this prior Vodafone interest was consistent with the Commission's rules, it had no bearing on Verizon Wireless's legal qualifications, and such assignment of licenses to Verizon Wireless was in the public interest.³⁴

14. In sum, for the reasons set forth above, we dismiss NTCH's petition for reconsideration of the *Declaratory Ruling* as moot to the extent it is premised on a challenge to Vodafone's 45 percent foreign investment in Verizon Wireless that has since been acquired by Verizon, or alternatively deny the Petition. We dismiss the Petition to the extent it seeks revocation or denial of licenses or applications held or filed by Verizon Wireless that are unrelated to these transactions, or alternatively deny the Petition insofar as it seeks such action with respect to such other licenses or applications, as unwarranted in light of the circumstances as described above.

III. ORDERING CLAUSES

15. 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 of NTCH, Inc. filed on September 24, 2012, is DISMISSED, or alternatively DENIED.

16. IT IS FURTHER ORDERED that WT Docket Nos. 12-4 and 12-175 ARE HEREBY TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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deciding whether to initiate enforcement actions, and such a decision involves the balancing of . . . numerous factors").

³⁴ See *supra* ¶ 9 & note 21; File No. 0005573976 (filed Jan. 4, 2013); FCC Report No. 8583, at 4 (Apr. 3, 2013).