

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
COOK INLET REGION, INC.,)	
)	
Transferor,)	
)	WT Docket No. 00-207
And)	DA 00-2397
)	
VOICESTREAM WIRELESS)	
CORPORATION,)	
)	
Transferee)	
)	
Application for Consent to)	
Transfer of Control)	

OPPOSITION TO PETITION TO DENY

VoiceStream Wireless Corporation (“VoiceStream”), by its attorneys and pursuant to the Commission’s Public Notice released October 24, 2000,¹ hereby submits its opposition to the Petition to Deny (the “Petition”) of Jordan-Soldier Valley Telephone Co. d/b/a WITCO (“WITCO”) to the above-captioned applications for transfer of control of certain licenses from Cook Inlet Region, Inc. (“CIRI”) to VoiceStream. WITCO does not have standing to file the Petition and has raised no public interest considerations. Even if WITCO had raised legitimate issues, which it has not, other Commission proceedings, not this proceeding, would be the proper venues to raise any such issues.

¹ *VoiceStream Wireless Corporation and Cook Inlet Region, Inc. Seek FCC Consent for Transfer of Control of Licenses and Authorizations*, FCC Public Notice, DA 00-2397 (Oct. 24, 2000) (“CIRI Public Notice”).

ARGUMENT

A. WITCO Does Not Have Standing To File the Petition to Deny

Section 309(d)(1) of the Communications Act permits any “party in interest” to file a petition to deny any application.² To establish standing as a party in interest, a petitioner must allege sufficient facts to demonstrate that grant of the subject application would cause the petitioner to suffer a direct, distinct and palpable injury.³ The allegations of fact, except for those of which official notice may be taken, must be supported by the affidavit of a person with personal knowledge of the facts alleged.⁴ The petition must further demonstrate a causal link between the claimed injury and the challenged action.⁵ To demonstrate a causal link, a petition must establish that: (a) the injury fairly can be traced to the challenged action and (b) the injury would be prevented or redressed by the relief requested.⁶ WITCO’s Petition is entirely lacking the substance necessary to satisfy the standing requirements.

As a preliminary matter, WITCO did not attach an affidavit to the Petition in support of the facts alleged, as required by the statute. This alone is reason to deny the Petition.⁷ Without such an affidavit, from someone with personal knowledge of the facts, WITCO’s allegations regarding standing are unsubstantiated.

² 47 U.S.C. § 309(d)(1).

³ See *Los Angeles Cellular Telephone Co.*, 13 FCC Rcd 4601, 4603-04 (CWD, WTB 1998), citing *AmericaTel Corp.*, 9 FCC Rcd 3993, 3995 (1994), citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972); see also *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *Warth v. Seldin*, 422 U.S. 490, 499, 508 (1975).

⁴ 47 U.S.C. § 309(d)(1).

⁵ See *Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 74, 81 (1978).

⁶ *Id.* at 74, 81.

⁷ See *Corpus Christi Cellular Telephone Co.*, 3 FCC Rcd 1889, ¶ 8 (1988) (finding that petitioner lacked standing because the affidavit it filed to support its claim of standing was unacceptable as it was unsigned, unsworn and failed to give individual’s address); *Tele-Communications, Inc.*, 1986 FCC LEXIS 3373, ¶ 15 (1986) (finding lack of standing where, among other things, petitioner’s reliance on general allegations in newspaper articles did not satisfy the personal knowledge affidavit requirement).

Even assuming that the Petition were properly supported by an Affidavit, WITCO has not alleged sufficient facts to demonstrate that the grant of the transfer of control application would cause WITCO to suffer a direct, distinct and palpable injury. WITCO does not clearly articulate the injury that would result from the grant of the application. Rather, in scattered portions of the Petition, WITCO states that it “currently seeks access to spectrum through acquisition, partitioning agreements or spectrum lease arrangements to further its plans to bring advanced wireless telecommunications services to rural portions of Nebraska and Iowa in the Omaha and Des Moines Basic Trading Areas”⁸ and that the transfer of CIRI’s PCS licenses, including the license for the Omaha BTA, to VoiceStream, somehow “would be fundamentally unfair” when carriers like WITCO are allegedly having difficulty in obtaining access to spectrum.⁹ WITCO speculates that with the transfer of CIRI’s licenses to VoiceStream “it is inevitable that the focus of [CIRI’s] services will move to the urban markets to the detriment of rural consumers.”¹⁰ As best as VoiceStream can divine, the alleged injury is that WITCO will have a more difficult time obtaining access to spectrum if the transfer of control application is approved. Even if WITCO had presented some specific facts to prove VoiceStream’s expected conduct, which it has not, approval of the transfer would result in VoiceStream succeeding to only 15 MHz of C Block spectrum in the Omaha BTA. Without even taking into consideration the cellular licenses in the market, VoiceStream would be only one of seven (7) PCS carriers in the Omaha BTA who together hold 120 MHz of PCS spectrum.

⁸ Petition to Deny of Jordan-Soldier Valley Telephone Co. d/b/a WITCO at 1, WT Docket 00-207 (Nov. 22, 2000) (“Petition”).

⁹ Petition at 6-7.

¹⁰ Petition at 4.

No causal link exists between WITCO's claimed injury and the transfer application. The alleged difficulty WITCO has experienced with respect to obtaining spectrum cannot be traced to the transfer of licenses from CIRI to VoiceStream. WITCO makes only vague, speculative assertions that the transfer of licenses to VoiceStream would affect WITCO's ability to obtain spectrum. More likely, WITCO's difficulties are the result of its own inaction and curious way of initiating a dialogue with a carrier with whom it wishes to transact business. WITCO claims that its "plans to introduce wireless advanced services to these traditionally underserved areas have been stymied by the scarcity of available spectrum for this purpose."¹¹ Despite its concerns about the scarcity of spectrum, however, WITCO did not pursue any spectrum as a bidder in the Commission's Auction 22, in which certain PCS licenses in the Omaha and Des Moines BTAs were auctioned.¹² WITCO did not participate in the auction. CIRI and ABC Wireless, Inc., respectively, won the Omaha and Des Moines licenses.¹³ Furthermore, to the best of VoiceStream's knowledge, no WITCO employee or representative has even contacted anyone at VoiceStream regarding spectrum access in Iowa or Nebraska prior to the filing of the Petition.¹⁴ Rather, WITCO's first overture to VoiceStream on the subject of licenses in the Omaha and Des Moines BTAs was the Petition at issue here followed by a call from its counsel, advising that the litigation could be resolved by some form of spectrum access agreement.

¹¹ Petition at 2.

¹² See *Auction of 365 Broadband PCS Licenses*, FCC Public Notice, DA 99-482 (Mar. 10, 1999); *C, D, E and F Block Broadband PCS License Auction Closes*, FCC Public Notice, DA 99-757 at Attachment A (Apr. 20, 1999). In the competitive bidding context, the Wireless Telecommunications Bureau has found that a petitioner has standing to challenge licenses which an applicant has won at auction only if the petitioner was qualified to bid in those markets. *Nextel License Acquisition Corp.*, 13 FCC Rcd 11990, 11993 and n.30 (WTB, 1998). In addition, WITCO did not apply to become a bidder in FCC Auction 35, in which spectrum in rural Nebraska will be available. See *Auction of Licenses for C and F Block Broadband PCS Spectrum*, FCC Public Notice, DA 00-2614 at Attachment A (Nov. 17, 2000); *C and F Block Broadband PCS Spectrum Auction Scheduled for December 12, 2000*, FCC Public Notice, DA 00-2259 at Attachment A (Oct. 5, 2000).

¹³ *C, D, E and F Block Broadband PCS License Auction Closes*, FCC Public Notice, DA 99-757 at Attachment A (Apr. 20, 1999).

Moreover, if the transfer application is denied, WITCO's claimed injury would not be prevented or redressed. If CIRI maintains control of its licenses rather than transferring them to VoiceStream, WITCO would not obtain the licenses or access to the spectrum. It would still be required to negotiate with CIRI or some other licensee in the market. To the best of VoiceStream's knowledge, WITCO has not made any such effort to obtain spectrum access from CIRI.¹⁵

WITCO's purported injury in support of standing is speculative at best. WITCO has failed to establish with any specificity that it will suffer, or is even likely to suffer, any injury as a result of the transfer from CIRI to VoiceStream. The Commission has rejected standing claims with much more support.¹⁶ In fact, WITCO so clearly lacks standing that its filing of the Petition amounts to an abuse of the Commission's processes.¹⁷

B. This Proceeding is Not the Proper Venue for Relief for WITCO

WITCO devotes the bulk of the Petition, not to any potential injury resulting from the grant of the transfer application from CIRI to VoiceStream, but to VoiceStream's pending merger with Deutsche Telekom AG ("DT"). As is clearly stated in the CIRI Public Notice, "Parties wishing to comment on the ultimate transfer of control of these licenses to DT should comment in [that docket]."¹⁸ The proper forum for WITCO's argument related to DT, assuming

¹⁴ Declaration of David A. Miller (attached hereto as Exhibit 1).

¹⁵ *Id.*

¹⁶ See, e.g., *Metromedia Company*, 7 FCC Rcd 714, 715 (1992) (finding contention that if applicant acquires control, petitioner will no longer be afforded favorable roaming rates it was currently receiving to be speculative and insufficient to confer standing); *Tele-Communications, Inc.*, 1986 FCC LEXIS 3373, ¶ 15 (1986) (finding failure to establish standing where, among other things, petitioner did not present any examples or evidence of its competition or intent to compete in franchising or advertising arena with applicant for transfer of control).

¹⁷ See *Commission Taking Tough Measures Against Frivolous Pleadings*, FCC Public Notice, 11 FCC Rcd 3030 (Feb. 9, 1996) (a pleading "may be deemed frivolous. . . if there is no good ground to support it or it is interposed for delay") (internal quotations omitted).

¹⁸ CIRI Public Notice at n.3.

it had one, is not this proceeding, but rather the proceeding instituted by the Commission to review the merger.¹⁹ It is improper to assume any outcome for that proceeding or to otherwise prejudge it in this proceeding.

WITCO's real agenda — obtaining access to spectrum — should be addressed in the normal way in which carriers conduct business, namely, through voluntary negotiation. To the extent WITCO seeks agency relief, it should focus on Commission proceedings which are germane. The Commission very recently issued a notice of proposed rulemaking to consider the removal of “unnecessary regulatory barriers to the development of more robust secondary markets in radio spectrum usage rights.”²⁰ The Spectrum NPRM will address issues regarding spectrum utilization and availability, including the efficiency of current use of spectrum in rural areas and leasing of spectrum usage rights.²¹ Clearly, WITCO's concerns about obtaining spectrum from CIRI, VoiceStream and other licensees of spectrum in the Omaha and Des Moines BTAs fit within the issues that the Commission is addressing in the Spectrum NPRM proceeding, not this proceeding.

C. WITCO's Arguments Regarding the VoiceStream/DT Merger are Meritless

Even if WITCO's Petition were not procedurally defective, it is substantively meritless. WITCO alleges that the transfer of control of the CIRI licenses to VoiceStream would contravene the public interest because VoiceStream would ignore rural markets.²² CIRI and

¹⁹ *VoiceStream Wireless Corporation, Powertel, Inc., and Deutsche Telekom AG Seek FCC Consent to Transfer Control to of Licenses and Authorizations and Request Declaratory Ruling Allowing Indirect Foreign Ownership*, FCC Public Notice, DA 00-2251, at n.3 (Oct. 11, 2000).

²⁰ *Promotion Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Notice of Proposed Rulemaking, WT Docket No. 00-230 (FCC 00-402) ¶1 (Nov. 27, 2000) (“Spectrum NPRM”).

²¹ *Id.* at ¶¶ 2, 18.

²² Petition at 4.

VoiceStream filed an extensive public interest showing with the Commission, demonstrating that the impact of the transfers will be pro-competitive and in the public interest, and WITCO has made no specific factual assertions to contradict this showing. WITCO merely asserts that the proposed foreign ownership of CIRI by VoiceStream and ultimately by DT will “distort competitive markets in the U.S.,” to the detriment of rural consumers.²³ WITCO purports to support its argument with conclusory, speculative assertions regarding anti-competitive behavior by foreign government-owned entities, but fails to raise any specific facts or allegations that show that the proposed transfers will result in reduction of service or any harm to rural customers. Indeed, as the public interest showing filed by CIRI and VoiceStream explains, the consummation of the transaction at issue here will lead to the creation of a more efficient and competitive national GSM network, giving consumers the choice of an additional nationwide service offering as an alternative to the existing TDMA and CDMA networks, and additional pricing and service options.

Similarly, WITCO has not controverted any of the facts contained in the extensive public interest statement accompanying VoiceStream’s application for transfer of control to DT. As set forth in detail in the public interest statement, the merger is pro-competitive and demonstrably in the public interest. Approval of the VoiceStream/DT merger will facilitate development of an advanced national GSM network that will offer consumers — both urban and rural — a variety of advanced mobile services and seamless national and international roaming. This network will improve the competitive landscape by providing a solid competitor to CDMA and TDMA networks. Thus, even if WITCO’s arguments regarding the VoiceStream/DT merger had been raised in an appropriate forum, they nonetheless should be rejected.

²³ Petition at 7.

For the reasons stated above, WITCO has not established standing to file its Petition to Deny the application for transfer of control of licenses from CIRI to VoiceStream and WITCO's Petition should be dismissed as defective or denied.

Respectfully submitted,

VOICESTREAM WIRELESS CORPORATION

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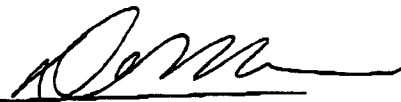
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Dated: December 1, 2000

DECLARATION

I, David A. Miller, hereby state the following under penalty of perjury. I am Vice President of Legal Affairs of VoiceStream Wireless Corporation ("VoiceStream"), the Transferee in the subject proceeding, and I am authorized to make this declaration on its behalf. I have read the foregoing Opposition to Petition to Deny ("Opposition"). The statements of fact contained in the Opposition are true and correct of my personal knowledge, except as to the matters which are therein stated on information or belief, and as to those matters I believe them to be true. To the best of my knowledge, no employee or other representative of Jordan-Soldier Valley Telephone Co. d/b/a WITCO has contacted me or anyone else at VoiceStream or Cook Inlet Region, Inc. regarding spectrum access in Iowa and/or Nebraska.

By: 
David A. Miller
Vice President of Legal Affairs
VoiceStream Wireless Corporation

Date: 12/1/00

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December, 2000, I caused a true and correct copy of the foregoing Opposition to Petition to Deny to be served by first-class U.S. mail, postage prepaid, upon the following:

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