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After One-Year Engagement, AT&T, Centennial Allowed To Tie The Knot

Raymond Quianzon
quianzon@fhhlaw.com
703-812-0424

After taking a year to analyze the state of the communications industry in the Midwest, Southeast and Puerto Rico, the FCC finally determined that competition exists in wireless markets and allowed AT&T to acquire Centennial Communications. The FCC offered no explanation for why its review required 12 months, but the two companies wasted no time: they merged the day after the government gave the go-ahead. Remarkably, one of the FCC Commissioners described the government's pace as "clearly on a fast track."

The companies asked the FCC for permission to merge in November, 2008. The following month, the FCC issued a public notice inviting the public to comment on the merger. Members of the public were given a month and a half, until February, 2009, to submit comments to the FCC. AT&T then embarked on a half year of requests to the government asking them to expedite its deliberations; numerous meetings were convened with FCC staff and more than a dozen letters were submitted asking for action. Finally, one year after the applications were submitted, the FCC consented to the transaction.

During the previous administration, the FCC had a policy of trying to complete its review of business transactions within 180 days so that businesses were not hindered by inaction. During the past few years the FCC went so far as to disclose informal timeline guidelines on its website; it also posted a clock for each transaction so that both the public and FCC staff were aware of how long the process had taken. The new administration kept the clock on the FCC's website for this transaction and tauntingly indicated that the government took 323 days to review the transaction – nearly twice as long as previous reviews.

AT&T, with \$128 billion in 2008 revenues, touts itself as the world's largest communications company. AT&T will now increase its size with the acquisition of Centennial Communications, which it valued at \$2.8 billion. Centennial was a regional provider of communications services with more than a million wireless subscribers and three quarters of a million telephone access lines. Centennial's operations were concentrated in three regions of the country. Its Midwest operations covered portions of Michigan, Indiana and Ohio and its Southeast operations provided service in Mississippi,

Louisiana, and Texas. In addition to the continental U.S., Centennial also operated in Puerto Rico and the U.S. Virgin Islands with wireless phone service, wireless internet service, fiber service, and telephone service.

Both the FCC and the U.S. Department of Justice reviewed the transaction and found that competition exists in most of the areas served by Centennial. The merger involved 27 markets and the government determined that in 20 of those markets there were four or more providers of wireless phone service. In seven Louisiana and Mississippi markets the FCC determined that the merger would adversely impact competition. Therefore, the FCC ordered AT&T to divest its interests in the seven markets in order for the acquisition to move forward. Verizon seemed pleased to lend a hand and quickly snapped up five of the divested markets from AT&T.

As additional competitive safeguards, the FCC required AT&T to maintain Centennial's CDMA network in Puerto Rico and the Virgin Islands for 18 months (as AT&T had offered to do). In addition, the FCC conditioned its approval on AT&T's commitment that any carrier with fewer than 10 million subscribers that has an effective roaming agreement with Centennial as of the closing of the merger will have the option to continue to obtain roaming services, pursuant to the rates, terms and conditions of that agreement, in those areas where the carrier was obtaining roaming services on the Centennial network on the closing date, for the later of (i) a period of 48 months after the closing, or (ii) the full term of such carrier's agreement with Centennial (again, as volunteered by AT&T). Both of these conditions were intended to ensure that carriers needing a CDMA roaming partner would have access to such a partner in the areas formerly served by Centennial.

On the other hand, the FCC refused to require AT&T to provide interoperability functionality for its roaming partners, to eschew the "primary carrier" clause contained in its roaming agreements, or to renounce handset exclusivity deals. All of these were deemed to be beyond the limited scope of this merger proceeding.

So in the end, despite the Commission's oft-expressed concerns about consolidation within the industry, yet another Tier 2 carrier has been swallowed up by one of the Big Two.