

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re Application of)	
)	
QUALCOMM, INC.)	
)	
And)	WT Docket No. 11-18
)	
AT&T MOBILITY SPECTRUM, LLC)	File No. 0004566825
)	
to Assign for Consent Eleven 700 MHz Band)	
Licenses)	

REPLY TO OPPOSITION

King Street Wireless, L.P. (“King Street”), by counsel and pursuant to the Commission’s Public Notice of February 9, 2011, DA 11-252 (the “Public Notice”), hereby submits its Reply Pleading in the captioned proceeding.

A. Discussion

At least nine parties (the “Commenting Parties”) have participated in this proceeding to date, including AT&T and Qualcomm (collectively, the “Applicant”). The Commenting Parties include regional carriers, smaller carriers, satellite carriers, public interest organizations and two wireless trade associations. With the lone exception of Applicant, all Commenting Parties recognize the anti-competitive and general public interest problems associated with the proposed transaction. And all of that was before AT&T unveiled its next step in its plan to further strengthen its already dominant position in the wireless industry: the acquisition of the fourth-largest carrier in the nation, complete with many millions of subscribers. That acquisition would only exacerbate the serious anti-competitive concerns already existing.

B. The Conditions Sought by King Street Have Not Been Effectively Challenged

In its Opposition¹, Applicant asserts that there is robust competition in wireless in this country, and that there is really no reason to believe that AT&T would act anti-competitively, even if it could. Opposition, at 5. In so arguing, AT&T did not attempt to rebut any of the specific arguments presented by King Street, instead it argues only that there are no transaction-specific harms from this transaction for which remedy has been sought.²

For the most part, King Street simply urged that the Commission condition any grant of the subject application (the “Application”) upon Applicant doing with the spectrum that which it has already told the Commission it would do. Urging that Applicant comply with what it has told the Commission it would do is not asking too much, and it is most certainly not “unnecessary”, as Applicant asserts. Opposition, at iii. Moreover, given that the claim of public interest benefits that AT&T argues would result from grant of the application rests solely upon AT&T using the spectrum as it has promised to do, without such use, there is not even arguably any public interest benefit associated with the Application. And without such benefit, the Application cannot be granted. See, 47 USC § 310. So it is only logical to require AT&T to abide by its word.

Notwithstanding the above, Applicant has already started to waffle on the issue of it actually doing what it said it would do in the Application. See Opposition, at iii, where Applicant asserts that AT&T should not be locked into doing what it has already told the Commission it would do. Instead of presenting any reason why AT&T should be able to say one thing, and then do something very different, Applicant presents only general and unpersuasive

¹ Joint Opposition of AT&T Mobility Spectrum LLC (“AT&T”) and Qualcomm Incorporated to Petition to Deny or to Condition Consent and Reply to Comments (“Opposition”).

² In the summary, but not the text, of its Opposition, Applicant did argue that King Street’s request that AT&T not change its stated use of the Qualcomm is not necessary.

arguments about the Application presenting no threat of competitive harm. Those protestations should be seen for what they are: proof that an express condition is needed.³

C. Interoperability of 700 MHz Spectrum is Needed if There is Any Grant of the Application

The only condition proposed by King Street that went beyond requiring that Applicant do what it told the Commission, under penalty of perjury, that it would do, involves interoperability at 700 MHz.

Several other parties have made the same urging to the Commission in this proceeding. That is not surprising, given that in the proceeding (RM 11592) where the issue was first raised, the vast majority of the parties commenting there also advocated the same substantive relief.

Applicant's argument that, since interoperability is at issue in another proceeding it need not be addressed here, ignores both reality and the Commission's long-standing practice of conditioning license grants in order to further the public interest.⁴ Applicant effectively conceded as much, then explained that the multiple other instances of the Commission imposing conditions were somehow different, because the conditions were "voluntarily" accepted. Opposition, at 30, n. 110. That the parties in those other proceedings agreed to conditions that they no-doubt discussed with Commission staff, in an effort to make acceptable what otherwise would not have been acceptable, may well have been pragmatic for all concerned. But it hardly makes those conditions truly "voluntary" and it most certainly does not distinguish those situations from the one at issue.

³ As King Street explained in its petition in this proceeding, were AT&T to be permitted to use the spectrum at issue in ways other than as provided in this Application, serious interference could result in the 700 MHz band.

⁴ The request for rulemaking in RM 11592 has languished without meaningful action for more than eighteen months.

D. Applicant Has Made No Showing of Public Interest Benefits from the Transaction That Obviate the Need for Conditions

Both in the Application and in its Opposition, Applicant asserts that considerable public interest benefit would be derived from consummation of the proposed transaction. Yet, it never explains how and why! All of Applicant's assertions are vague and conclusory. None included "before-after" analysis that would demonstrate why the public would derive any benefit from the transaction.

E. Applicant Has Utterly Failed to Appreciate the Competitive Complications Associated with the Transaction

Both the Application and in its Opposition are most notable for what they do not say. Nowhere does Applicant recognize that, upon consummation of the transaction, AT&T and Verizon will have more than 80% of all 700 MHz spectrum; that AT&T and Verizon currently hold the vast majority of industry subscribers; that AT&T and Verizon account for the dominant portion of industry revenues; and that, while AT&T has been a dominant position, it has taken advantage of that position by refusing to provide data roaming, utilizing exclusive equipment contracts and refusing to provide for interoperability at 700 MHz, all of which thwart competition and dis-serve the public interest.

Only when one intentionally ignores all of the above can it assert with a straight face that the subject transaction raises no genuine issues that either preclude grant of the subject application or necessitate the inclusion of conditions such as requested by King Street.

F. Conclusion

The Commission can grant the instant Application only if it finds that grant would serve the public interest. As the transaction is currently proposed by Applicant, no such finding is

possible. Thus, the Commission can either not grant the Application, and instead designate it for hearing, or grant it with the conditions requested by King Street and other Commenting Parties.

Respectfully submitted,

KING STREET WIRELESS, L.P.

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Its Attorney

CERTIFICATE OF SERVICE

I, Gary L. Smith, a legal assistant of the law firm Lukas, Nace, Gutierrez & Sachs, LLP, hereby certify that on this 28th day of March, 2011, copies of the foregoing REPLY TO OPPOSITION were forwarded by e-mail, in pdf format, to the following:

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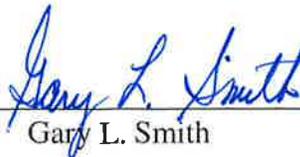
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